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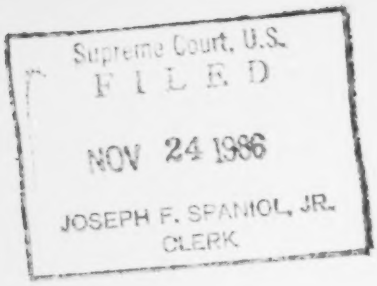

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

WILLIAM M. BIERMANN, PETITIONER,

V.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

WILLIAM M. BIERMANN, PETITIONER PRO SE
192 PARK LAND DRIVE
LAKE PLACID, FLORIDA 33852

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QUESTIONS PRESENTED

(1) Is Respondent in possession of the necessary FACTS at the Administrative Level on the Administrative Record to prove the existence of JURISDICTION over Petitioner's person, property and interest?

(2) Was Petitioner denied "Due Process of Law" when the United States Tax Court denied him the opportunity to cross-examine affiant as provided by the last sentence of Rule 121(e) of Rules of Practice & Procedure of the United States Tax Court?

(3) Did Petitioner in his PETITION fail to allege any justiciable errors with respect to Respondent's determinations in the Notice of Deficiency, and did he also fail to indicate justiciable facts extant therein in support of each error as required by Rule 34(b)(4) and (5) of Rules of Practice & Procedure of the United States Tax Court?

(4) Did respondent in his MOTION FOR SUMMARY JUDGMENT (pages 52A-57A) make FALSE charges, allegations, and statements unsupported by the record and FACTS of the case?

(5) Did the United States Tax Court in their MEMORANDUM SUR ORDER (pages 3A-13 A) make FALSE charges, allegations, and statements unsupported by the record and FACTS of the case; and did the Eleventh Circuit Court of Appeals in their OPINION (pages 33A-36A), marked DO NOT PUBLISH, knowingly and willingly support those FALSE charges, allegations, and statements unsupported by the record and FACTS of the case?

(6) Was the 16th Amendment to The Constitution legally ratified on the 15th of February 1913 when the Secretary of State FALSELY certified to the United States Congress that the required number of States had properly ratified that amendment?

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OPINIONS BELOW

The purported opinion of the United States Tax Court entered the 24th day of September 1985 headed ORDER AND DECISION, and to which is attached thereto a copy of that Court's MEMORANDUM SUR ORDER (pages 1A-13A) in which FALSE charges, allegations, and statements are made therein, notwithstanding the FACT that petitioner's position was properly and clearly brought forward by him in his PETITION (pages 42A-51A); followed by the purported opinion of the Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 84-5996, Aug. 26, 1985 (marked DO NOT PUBLISH) (pages 28 A-32A), which is referenced as Footnote 4/ under the Tax Court's MEMORANDUM SUR ORDER (page 7A) as follows:

> We note petitioner has previously been advised by this Court that his position is frivolous. See Biermann v. Commissioner, ____ F.2d ____ (11th Cir., Aug. 26, 1985, 85-2 USTC par. 9632.;

and then followed by the purported opinion

of the Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 86-5033, August 27, 1986 (also marked DO NOT PUBLISH) (pages 33A-36A), are attached hereto in the Appendix of this Petition for a Writ of Certiorari. The Eleventh Circuit opinion, Biermann v. Commissioner, No. 84-5996, August 26, 1985 is also attached hereto (pages 28A-32A), in order for the petitioner to also point out to this Court the FALSE charges, allegations, and statements made therein, which are covered by him in this petition on page 56.

The United States Tax Court's ORDER (Docket No. 21777-84) dated the 22nd of January 1986, to which is attached thereto a document titled DEMAND MADE UPON THE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE and "Motion to Supplement Record", attaching thereto another document titled THIS IS AN ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD, are

all attached to this petition (pages 14A-27A) to indicate to this Court that although those documents should have influenced the opinion of the Eleventh Circuit Court of Appeals, they are not mentioned or cited therein, even though they were (under separate cover) forwarded/by the United States Tax Court to the Eleventh Circuit for inclusion in the Record on Appeal.

JURISDICTION

The purported JUDGMENT of the Eleventh Circuit Court of Appeals was alleged entered on August 27, 1986, and then ISSUED AS MANDATE on September 19, 1986, as indicated on pages 37A and 38A of this petition.

The following documents are included in this petition in order to clearly demonstrate to this Court the failure of the Eleventh Circuit Court of Appeals to take into consideration the totally FALSE charges, allegations, and statements in the ORDER AND DECISION of the United States Tax Court

(pages 1A-13A) and the RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (pages 52A-57A) in arriving at their opinion (pages 33A-36A):

> NOTICE OF DEFICIENCY and PETITION, pages 39A-51A;
>
> RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, pages 52A-57A;
>
> Petitioner's NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, to which is attached thereto a copy of the 14 interrogatories submitted to respondent by petitioner, pages 58A-69A;
>
> Petitioner's MOTION TO VACATE DECISION, pages 70A-78A.

The above documents are marked as EXHIBITS A thru D respectively as so indicated in the Appendix of this Petition for a Writ of Certiorari. (Top left corner of pg)

The statutory provision believed to confer on this Court jurisdiction to review judgment by writ of certiorari is Section 1254 of Title 28 of the United States Code, as provided by Section 7482(a) of the Internal Revenue Code (USC 26).

FACTUAL
STATEMENT OF THE CASE

WILLIAM M. BIERMANN, petitioner herein, is a natural private individual, and an unenfranchised sovereign who resides in the county of Highlands, state of Florida, and who maintains a mailing address of 192 Park Land Drive, Lake Placid, Florida 33852. He is a sovereign freeman who lives, resides, and works as a matter of natural right, and not as an exercise of any privilege or monopoly, as further set forth in the FACTUAL allegations of this appeal and in his PETITION with the United States Tax Court as shown under items h) thru n) appearing on pages 47A thru 49A of this Petition for a Writ of Certiorari.

On the 26th of June 1984 in response to respondent's NOTICE OF DEFICIENCY dated the 2nd of April 1984 alleging a deficiency in federal income taxes allegedly owed by the petitioner, petitioner prepared and submitted a PETITION to the United States

Tax Court in which he outlined the many errors committed by the Commissioner in his preparation of that NOTICE OF DEFICIENCY, and further indicated in that PETITION the FACTS UPON WHICH PETITIONER RELIED in support of that document. (pages 39A-51A). On or about the 10th of September 1984 in response to that PETITION petitioner received respondent's ANSWER substantially denying everything appearing in petitioner's PETITION.

On the 21st of December 1984 petitioner informally directed a set of interrogatories to respondent in which he requested responses to thirteen (13) specific questions. Inasmuch as respondent failed to respond to these interrogatories, petitioner submitted a motion to the Court to compel respondent to respond. This motion was DENIED by the Court on the 11th of March 1985. After some disagreement with respondent as to what constitutes informal dis-

covery requirements of the Tax Court, Petitioner met with respondent in her office on the 18th of April 1985 in regard to those interrogatories plus one (1) other additional interrogatory that was submitted to respondent by petitioner on the 8th of March 1985. Upon arrival at respondent's office, petitioner met with attorney Theresa E. Mitchell, at which time petitioner directed fourteen (14) specific interrogatories to her, but in each instance she failed to properly respond and only presented evasive responses to petitioner's questions; whereupon on the 24th of April 1985 petitioner directed by letter these same fourteen (14) specific interrogatories to respondent for another attempted response. (pages 63A-69A, marked as EXHIBIT C). However, respondent never responded, but instead submitted to the Court a MOTION FOR SUMMARY JUDGMENT (pages 52A-57A, marked as EXHIBIT B), to which was attached a copy of respondent's NOTICE OF DEFICIENCY and

related figures alleging that deficiency. Also attached was a document titled AFFIDAVIT OF THERESA E. MITCHELL IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

In response, on the 14th of May 1985, petitioner submitted to the Court his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (pages 58A-69A), in which he outlined seven (7) substantive statements of FACT in support of that notice of objection, requesting that should respondent's Motion for Summary Judgment prevail that he be granted an opportunity to cross-examine affiant Theresa E. Mitchell as provided by Rule 121(e) of the Tax Court. Attached to petitioner's motion were copies of his PETITION; his letter of the 24th of April 1985 in which he directed fourteen (14) interrogatories to respondent to which a reply had never been received other than evasive responses at the meeting on the 18 th of April with attorney Theresa E. Mit-

chell; and notarized AFFIDAVIT OF WILLIAM M. BIERMANN IN OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT. However, even though respondent's Motion for Summary Judgment was granted by the Court, petitioner's request for cross-examination was not granted by the Court.

On the 24th of September 1985, the United States Tax Court entered its ORDER AND DECISION (pages 1A-13A), in which was listed the deficiencies and additions to tax for the years 1980, 1981 and 1982, and further imposed a fine in the amount of $4,000 upon petitioner for allegedly bringing forth frivolous positions in his PETITION. Attached to this ORDER AND DECISION was a MEMORANDUM SUR ORDER outlining the Court's position allegedly in support of that ORDER AND DECISION.

In opposition to that ORDER AND DECISION, on the 30th of September 1985 petitioner submitted a MOTION TO VACATE DECI-

SION (pages 70A-78A). In that motion petitioner clearly outlined three (3) substantive reasons why his motion to vacate should be granted by the Court; however, the Court DENIED petitioner's motion on the 8th of October 1985.

On the 18th of December 1985 petitioner filed with the United States Tax Court his NOTICE OF APPEAL. However, just prior to the filing of that appeal, the petitioner on the 16th of December 1985 filed with the Tax Court a document headed DEMAND MADE UPON THE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE (page 16A). The purpose of this document was to transmit to the United States Tax Court a document prepared by petitioner titled/THIS IS AN ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD (pages 18A-26A). Upon receipt of this document the Court directed the Clerk of the Court to so file as a "Motion to Supplement Record";

and then further granted that motion and directed the Clerk of the Court to transmit that ORDER to the Court of Appeals for the Eleventh Circuit for inclusion in the record on appeal.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(1) RESPONDENT IS NOT IN POSSESSION OF THE NECESSARY FACTS AT THE ADMINISTRATIVE LEVEL ON THE ADMINISTRATIVE RECORD TO PROVE THE EXISTENCE OF JURISDICTION OVER PETITIONER'S PERSON, PROPERTY AND INTEREST:

When confronted by petitioner to prove the existence of JURISDICTION over his person, property and interest, Roy S. FISHBACH, Chief Counsel for the Internal Revenue Service in Jacksonville, Florida failed to respond to the ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD (pages 18A-27A) served upon him on the 10th of December 1985 even though the law requires that he and only he answer such law demand in a timely, material and substantive form, since only he can commit

REVIEW OF JUDGMENT OF FEDERAL COURT

Inasmuch as a review of judgment of the United States Tax Court is sought, the basis for federal jurisdiction in the court of first instance is Section 1254 of Title 28 of the United States Code as so provided by Section 7482 of the Internal Revenue Code.

(The above caption is to be inserted immediately following the 5th line on page 13)

(The above REVIEW OF JUDGMENT OF FEDERAL COURT was inadvertently left out of this petition, and it wasn't discovered until the petition was completed, all the pages numbered and photocopied. Consequently, this page was then numbered as page 13a in order to eliminate the need of renumbering all pages beyond page 13, and to avoid the very high cost of re-photocopying 2,385 pages (53 pages X 45 copies)).

the institution of his agency to any position as to procedure, law, fact, equity, jurisdictional facts, or other substantive issues (U.S. v. LaSalle Bank, S.Ct. 1978); and no delegate is acceptable for purposes of responding to or answering such instrument.

The U.S. Administrative Procedures Act and the Uniform Commercial Code govern this case, and Administrative Agency INTERNAL REVENUE SERVICE is bound by the Administrative Procedures Act and the Uniform Commercial Code.

JURISDICTION can be challenged anytime and must be proven. Once challenged, agency representative must affirmatively and positively on the Record, plead and prove it. (McNutt v. GM, 56 SCt.780, 80 LED 1135). Upon challenge, the Administrative has the BURDEN OF PROOF. (Administrative Procedures Act). Respondent's assertion of JURISDICTION over petitioner's person,

property and interest was merely assumed. Respondent, as an Agency cannot "boot-strap" itself into an area in which he has no JURISDICTION (U.S. v. Seatrain, 93 S.C. 1773). Long adherence to an improper ruling gives agency no vested right to continue such a fraudulent practice. (Flotill v. U.S., 358 F 20 607). Violation of administrative rules by an administrative agent is a violation of the statute. (Jeffries v. Olessen, 121 F. Supp. 463), and denies due process at the same time. (U.S. v. Capra, 372 F. Supp. 609). Proof of a deficiency in income taxes must be on the administrative records when that determination was made. Respondent asserted JURISDICTION over petitioner's person, property and interest without PROOF of anything.

Respondent's acts do not create substantive JURISDICTION, but only an appearance of JURISDICTION; a matter of form only (substance governing over form). Any past

act, such as failure to follow procedure or challenge respondent's asserted JURISDICTION over petitioner, occurred only under mistake of jurisdictional fact, mistake of fact, misrepresentation, duress, incapacity and other validating and invalidating causes. There is no "substantial nexus" (contract-agreement) that exists between petitioner and Administrative Agency INTERNAL REVENUE SERVICE. Petitioner is immune as an unenfranchised sovereign "free person" to any type of forced contractual obligation; and as such did not file a Federal Income Tax Return (Treasury Form 1040).

Statutes do not create JURISDICTION, and when statutes compel performance, there must be a valid contract. Administrative Agency INTERNAL REVENUE SERVICE has been citing the 16th Amendment to The Constitution as authority to ride rough shod over the citizens of this Nation. However, recent certified documents with official

seals have been allowed as evidence in court showing that the 16th Amendment was not ratified.

Respondent's representative must show PROOF on the Administrative Record that there is a deficiency in petitioner's alleged income tax for the years 1980, 1981 and 1982, and that such liability on petitioner's part to file such tax returns existed at the time when respondent's letter of the 2nd of April 1984 determined that such a deficiency existed. This includes official sworn statements in writing by these officials on the Administrative Record with their current residence address so that petitioner may have sufficient opportunity on the Record to a complete rebuttal of the charges against him, as well as new questions that petitioner was never able to ask, since he was not granted a sufficient nor adequate opportunity to even address his accusers properly.

Respondent's representative must provide a copy of the Administrative Record concerning petitioner with PROOF of Administrative Agency INTERNAL REVENUE SERVICE JURISDICTION over petitioner's person, property and interest. Petitioner's official notice to Roy S. FISHBACH (correct spelling has since been learned to be FISCHBECK) as Chief Counsel for the INTERNAL REVENUE SERVICE was notice to him that he could no longer claim that he was acting in good faith, since mere good faith assertions of JURISDICTION are no longer valid now that the challenge is on the Record. The Administrative Agency INTERNAL REVENUE SERVICE and its agent are not immune to acts committed outside their JURISDICTION.

Respondent's representative must show PROOF on the Administrative Record of any perpetual agreement or contract between Administrative Agency INTERNAL REVENUE SERVICE and petitioner that was entered into KNOW-

INGLY, VOLUNTARILY and UNDERSTANDING all the ramifications, with no concealment of material facts by the agency. "For no man can be held liable on a contract to which he was not a knowing, willing, voluntary party thereto." (Swanson v. Fulline, 248 F. Supp. 364) and (Uniform Commercial Code I-I03).

Rule 142 of Rules of Practice & Procedure, United States Tax Court under the heading BURDEN OF PROOF states the following:

> "(a) General: The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; ....." (emphasis added).

The statute in this case being the Administrative Procedures Act.

Although Roy S. FISCHBECK, Chief Counsel for the INTERNAL REVENUE SERVICE failed to respond to petitioner's ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD served upon him on

the 10th of December 1985, nevertheless respondent assessed petitioner in the amounts of $5,541.74, $1,372.39, and $9,274.97 on the 20th of February 1986 for the years 1980, 1981, and 1982 respectively, thereby acting in a direct and unlawful manner to petitioner's ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD so served upon their Chief Counsel. Consequently, on the 21st of April 1986, petitioner addressed a document to Merlin W. HEYE, District Director of the INTERNAL REVENUE SERVICE in Chamblee, Georgia titled "CERTIFICATION BY WILLIAM M. BIERMANN OF FALSE AND FRAUDULENT TAX ASSESSMENT IMPOSED UPON HIM BY THE DIRECTOR OF THE INTERNAL REVENUE SERVICE IN CHAMBLEE, GEORGIA FOR THE YEARS 1980, 1981 AND 1982".

(2) PETITIONER WAS DENIED "DUE PROCESS OF LAW" WHEN THE UNITED STATES TAX COURT DENIED HIM THE OPPORTUNITY TO CROSS-EXAMINE AFFIANT AS PROVIDED BY THE LAST SENTENCE OF RULE 121(e) OF RULES OF PRACTICE & PRO-

CEDURE OF THE UNITED STATES TAX COURT:

Rule 121(e) of Rules of Practice & Procedure of the United States Tax Court states the following, and is quoted in its entirety: (under heading SUMMARY JUDGMENT)

> "When Affidavits Are Unavailable: Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such order as is just. Where it appears from the affidavits of a party opposing the motion that his only legally available method of controverting the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed." (emphasis added).

Although Rule 121(e) clearly states that the Court may deny the motion, order a continuance, take other steps, or make such other order as is just; nevertheless the

only action taken by the Tax Court was to grant the respondent's Motion for Summary Judgment and ignore the request made by petitioner in the last paragraph of his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (page 62A), wherein he requested that the Court grant him the opportunity to cross-examine affiant Theresa E. Mitchell should respondent's Motion for Summary Judgment prevail. Had petitioner's request for cross-examination of affiant been granted, he could have easily demonstrated to the Court the duplicity and lies committed by the respondent in their pursuance of this case. Respondent's answers under oath to the questions outlined in petitioner's interrogatories (pages 63A-69A), coupled with the seven (7) substantive FACTS brought forward in petitioner's NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (pages 58A-62A), would have undoubtedly shown un-

to the Court how extensive petitioner's charge of deception and lies really is. This is petitioner's key to prevail in this case. To deny him the opportunity to cross-examine affiant is to deny him the opportunity to prevail, thereby effectively denying him "DUE PROCESS OF LAW"!

This lack of "Due Process of Law" was also brought to the attention of the Tax Court under item #1) under petitioner's MOTION TO VACATE DECISION (pages 70A-71A).

Also, petitioner is in possession of an audio cassette tape mechanically produced in the office of the affiant Theresa E. Mitchell on the 18th of April 1985, which could demonstrate to this Court his position supported by evidentiary oral responses of affiant to interrogatories propounded by petitioner, as was so brought forward under petitioner's STATEMENT REGARDING ORAL ARGUMENT appearing on page i of his appeal with the Eleventh Circuit

Court of Appeals.

Notwithstanding the respondent's refusal to respond to the interrogatories propounded by petitioner, nevertheless the Tax Court handed down a Summary Judgment in direct violation of Rule 121(b) of Rules of Practice & Procedure of the United States Tax Court, which clearly states the following under the heading SUMMARY JUDGMENT:

> "Motion and Proceedings Thereon: .... A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." (emphasis added).

(3) PETITIONER DID ALLEGE JUSTICIABLE ERRORS WITH RESPECT TO RESPONDENT'S DETERMINATIONS IN THE NOTICE OF DEFICIENCY, AND HE ALSO INDICATED JUSTICIABLE FACTS EXTANT THEREIN IN SUPPORT OF EACH ERROR AS REQUIRED BY RULE 34(b)(4) AND (5) OF RULES OF PRACTICE & PROCEDURE OF THE UNITED STATES TAX COURT:

Regardless of the FALSE charge

made under item 7) appearing on pages 56A and 57A of RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, this Court needs only to refer to items 3 a) thru 3 n) appearing on pages 42A thru 49A of his PETITION to the United States Tax Court, with particular emphasis on items 3 a) and h), to ascertain that petitioner did allege justiciable errors with respect to respondent's determinations in the NOTICE OF DEFICIENCY, and that he also indicated justiciable FACTS extant therein in support of each error as required by Rule 34(b)(4) and (5) of Rules of Practice & Procedure of the United States Tax Court. A review of these items should be sufficient to convince this Court that petitioner did indeed clearly list those ERRORS and FACTS with respect to respondent's determinations in the NOTICE OF DEFICIENCY. Under item 3 a) there are clearly listed the monetary ERRORS OF THE COMMISSIONER committed in the NOTICE OF DEFICIENCY. Under item

3 h) there are clearly listed the monetary FACTS UPON WHICH PETITIONER RELIES. The remainder of items 3 b) thru 3 g) also clearly list all of the other errors committed by the Commissioner; and the remainder of items 3 i) thru 3 n) clearly list all of the other FACTS UPON WHICH PETITIONER RELIES in his PETITION. Nothing could be more clearly drawn than that which is shown. For respondent to state in his motion for summary judgment that no alleged justiciable errors with respect to his determinations, and that no justiciable FACTS in support of such errors in petitioner's PETITION are extant therein, is simply an unmitigated lie.

(4) RESPONDENT IN HIS MOTION FOR SUMMARY JUDGMENT MAKES FALSE CHARGES, ALLEGATIONS, AND STATEMENTS UNSUPPORTED BY THE RECORD AND FACTS OF THE CASE:

On page 53A of RESONDENT'S MOTION FOR SUMMARY JUDGMENT respondent makes the statement that petitioner received wages,

interest income, and pension income during the years 1980 through 1982. With the possible exception of interest income, which petitioner alleges to be "Receipts from Savings & Loan"(see item 3 h)) on page 47A of petitioner's PETITION, this statement is totally FALSE. What petitioner did receive, however, are receipts in the form of checks for the contracted sale of his property (his labor), some of which are deferred; but which respondent alleges to be wages and pension income. It is impossible to classify the checks that petitioner received for the contracted sale of his property (his labor) as "wages", inasmuch as petitioner is not an "employee" and does not have an "employer" as so defined in the Internal Revenue Code (26 USC), requirements which are necessary to be fulfilled in order for petitioner to receive "wages". To demonstrate to this Court why petitioner does not receive "wages", it is necessary to quote herewith the definitions of the

words "employee", "employer", and "wages" as outlined in Sections 3401(c), (d), and (a) respectively of the Internal Revenue Code. The definitions of those words are vital to petitioner's position. They appear in the Internal Revenue Code under CHAPTER 24 -- COLLECTION OF INCOME TAX AT SOURCE - DEFINITIONS, and are defined as follows:

> Section 3401(c) Employee.--For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.
>
> Section 3401(d) Employer.--For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person,..... (emphasis added).
>
> Section 3401(a) Wages.--For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer,..... (emphasis added).

Inasmuch as petitioner does not work for the government, but instead works in the private sector of the economy in which he operates on a work relationship with his "Contracting Parties" selling his property (his labor), for which he receives checks for the contracted sale of that property; and also operates on the principle of a deferred pension relationship for the prior sale of his property (his labor) with his "Contracting Party", the Navy Finance Center in Cleveland, Ohio; is not an officer of a corporation, including the corporation known as the United States of America, petitioner is not an "employee" as defined in Section 3401(c) of the Internal Revenue Code. Also, petitioner is not an "employee" as defined in Title 5, Section 2105 covering Government Organization and Employees.

As previously stated, since petitioner does not work for the government, and is not an

officer of a corporation, he is therefore not an "employee" as so defined in the Code. Please remember, we are not talking about the customary usage of the word "employee", but instead the legal definition as it appears in Section 3401(c) of the Internal Revenue Code. Now, taking this one step further, you will note under the definition of the word "employer", that in order for one to perform services for an "employer", he or she must be an "employee" of an "employer". So, consequently, if you are not an "employee" as so defined in the Code, how could you possibly have an "employer" as so defined in the Code? Obviously, you can't. This now leads us to the final definition of the word "wages". The Court will please note from the definition in the Code that in order to have been paid "wages" one needs to perform services as an "employee" of an "employer". However, if you are not an "employee", and you don't have an

"employer", how could you possibly be paid "wages" as an "employee" of an "employer" as so defined and illustrated in the Code? Again, obviously, you can't. Therefore, if you are not an "employee", and you don't have an "employer" who pays you "wages" as so defined and illustrated in the Code, none of the definitions of the words "employee", "employer" and "wages" as so illustrated in the Code apply to you. Since the petitioner is not an "employee", and does not have an "employer" from whom he receives "wages" as so defined and illustrated in the Code, than what do the checks represent that he receives from his "Contracting Parties? Simply put, these checks represent what he receives from his "Contracting Parties" for the contracted sale of his property (his labor). The Supreme Court and the State Courts have consistently ruled that the constitutional guarantee of "liberty" protects the exercise of natural and common law rights of an

individual to property. and over one's labor as a form of property. (The Antelope, 23 U.S. 66; Slaughter-House Cases, 83 U.S. 36, 127; In re Marshall, 102 F.323; Low v. Reese Printing Co., 59 N.W. 362; Bogni v. Perotti, 112 N.E. 853).
(marked as EXHIBIT B)

On page 54A,/respondent makes the following FALSE statement under item 2):

> "The respondent has documentary evidence of the wages, interest income, and pension income received by the petitioner during the years 1980 through 1982, inclusive, which may be introduced into evidence should a hearing on this motion be necessary."

Petitioner responded to this FALSE statement under item 1) of his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, the answer to which appears on pages 58A and 59A, marked as EXHIBIT C.

On page 54A, respondent also makes the following FALSE statement under item 3):

> "The petitioner has raised no factual objection denying receipt of the above cited income in the taxable years 1980 through 1982, inclusive, but instead alleges: ....."

Petitioner also responded to this FALSE under item 2) statement/in his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, the answer to which appears on pages 59A and 60 A, marked as EXHIBIT C.

The following item 4) appearing on page 55A, marked as EXHIBIT B, is also FALSE:

> "The petitioner's objections to filing a Federal income tax return and to the payment of income tax have been pressed upon the Tax Court countless times in recent years and have been universally rejected." (emphasis added).

This petitioner's objections to filing a Federal income tax return based on his PETITION (pages 42A-51A), marked as EXHIBIT A, with particular emphasis on those errors cited under items 3 a) thru g) (pages 43A-47A); and those FACTS UPON WHICH PETITIONER RELIES, items 3 h) thru 3 n) (pages 47A-49 A), have NEVER BEEN RULED UPON BY ANY COURT AT ANY TIME. I respectfully call to the attention of this Court that respondent fails to cite even one (1) case law in support of the above statement. He cannot for

the simple reason that the statement is FALSE.

Respondent's statement in item 6) (page 56A), marked as EXHIBIT B, in which he alludes that petitioner has made an objection to the payment of income taxes on the basis of moral, religious, or frivolous constitutional grounds, is a blatant lie, inasmuch as their is nothing in the record or FACTS of the case to indicate that petitioner has ever taken a position based on any of those grounds. The petitioner also responded to this alludation on pages 60A and 61A, marked as EXHIBIT C, of his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT. In item 6) respondent FALSELY cites Hatfield v. Commissioner, 68 T.C. 895 (1977); Wright v. Commissioner, T.C.M. 1981-65; and Evans v. Commissioner, T.C.M. 1981-580 as similar cases to the issues of this petition, wherein he states the following:

> "In similar cases where the respondent has sought to dismiss an action through summary judgment because there were no issues of material fact in dispute, this Court has approved the assertion of additions to the tax under I.R.C. Sections 6651(a)(1) and 6653(a) where the petitioners have not alleged specific facts to support their position that no addition to tax is warranted except their objection on moral, religious, or frivolous constitutional grounds to paying federal income taxes." (emphasis added).

Contrary to what respondent claims in the above statement that petitioner of this Petition for a Writ of Certiorari did not allege specific facts to support his position, nevertheless, this issue is clearly covered under (3) beginning on page 24 of this petition, and ending with page 26. In Hatfield v. Commissioner, supra, petitioner objected on the gounds of self-incrimination; in Wright v. Commissioner, supra, petitioner objected on the grounds of religious, moral and ethical objections to war; and in Evans v. Commissioner, supra, petitioner objected on the grounds of constitutional arguments. Therefore, it

is obvious that the foregoing cited case laws are FALSELY related to this petitioner's PETITION (pages 42A-51A), wherein he does not object to the paying of federal income taxes on moral, religious, or respondent's so-called frivolous constitutional grounds, but rather for the extensive reasons listed within that PETITION. Consequently, respondent's statement is totally FALSE.

(5) THE UNITED STATES TAX COURT IN THEIR MEMORANDUM SUR ORDER (PAGES 3A-13A) MAKES FALSE CHARGES, ALLEGATIONS, AND STATEMENTS UNSUPPORTED BY THE RECORD AND FACTS OF THE CASE; AND CITES UNRELATED CASE LAW IN THAT ORDER; AND THE ELEVENTH CIRCUIT COURT OF APPEALS IN THEIR OPINION (PAGES 33A-36A), MARKED DO NOT PUBLISH, KNOWINGLY AND WILLINGLY SUPPORTED THOSE FALSE CHARGES, ALLEGATIONS, AND STATEMENTS UNSUPPORTED BY THE RECORD AND FACTS OF THE CASE:

Petitioner,in his MOTION TO VACATE DECISION (pages 70A thru 78A), marked as EXHIBIT D, under item 1) on page 70A, immediately following his opening paragraph, states the following:

> "The Court, in issuing an ORDER AND DECISION based upon a MEMORANDUM SUR ORDER citing spurious and unrelated case law in FALSELY accusing Petitioner of taking a frivolous position, has effectively denied "due process" by depriving the Petitioner of an opportunity of a Tax Court trial in which he could have successfully challenged the allegations appearing in that sur order that may have been brought forward during trial. This ORDER AND DECISION was entered by the Court notwithstanding that Petitioner had submitted a NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT in which he clearly outlined 7 substantive statements of FACT in support of that notice of objection. Although the Petitioner had requested in his notice of objection that he be given the opportunity to controvert the alleged facts set forth by Respondent in his Motion for Summary Judgment, as permitted by Rule 121(e), he was also denied this opportunity to be heard and to cross-examine affiant, thereby further denying him "due process". (emphasis added).

Therefore, in support of petitioner's position, and in rebuttal to the Tax Court's MEMORANDUM SUR ORDER (pages 3A-13A), the following are respectfully submitted unto this Court:

The following statement appearing on page 6A is unsupported by the record and FACTS of the case:

> "It is apparent that the petition is subject to dismissal. We note that in no place does petitioner claim that he did not receive compensation for services, nor does he deny that he received interest or the pension from the Navy Finance Center. Rather, he contents himself with the long-rejected tax protestor argument that he has a cost basis equivalent to the amount he received on the sale. We dealt with this argument in Reading v. Commissioner, 70 T.C. 730 (1978), affd. 614, F.2d 159 (8th Cir. 1980), and then again in Rowlee v. Commissioner, 80 T.C. 1111 (1983),as well as in memorandum decisions too numerous to mention.4/"

Rebuttal: It is not apparent that the petition is subject to dismissal, due to the following reasons:

(a) Petitioner did not receive compensation for services, but instead received checks from his "Contracting Parties" for the contractual sale of his property (his labor).

(b) Petitioner did not claim he has a cost basis equivalent to the amount he received on the sale; but instead stated under item k) on pages 48A and 49A of his PETITION , marked as EXHIBIT A, the following:

> "The cost basis Petitioner inherited from the donor of the property sold was unknown and indeterminable. A substituted cost basis was determined for each of the properties to be equal to their fair market value just before the sale, corresponding to the time the properties were acquired by, and in the hands of the donor, and as shown in Table 2 above."

(c) The Tax Court did not deal with this petitioner's argument in Reading v. Commissioner, supra, as so claimed by that Court; but instead in the Reading case delt with that petitioner's claimed deductions from gross income as defined in the 1954 Code for their personal, living and family expenditures, an issue completely unrelated to this petitioner's position as so indicated in his PETITION (pages 42A-51A). Also, the Tax Court, in their OPINION, page 734 of cited case Reading v. Commissioner, supra, makes the following FALSE statement:

> "But the sale of one's labor is not the same creature as the sale of property,....."

The Supreme Court and the State Courts have consistently ruled that the constitu-

tional guarantee of "liberty" protects the exercise of natural and common law rights of an individual to property, and over one's labor as a form of property. (The Antelope, 23 U.S. 66; Slaughter-House Cases, 83 U.S. 36, 127; In re Marshall, 102 F.323; Low v. Reese Printing Co., 59 N.W. 362; Bogni v. Perotti, 112 N.E. 853). This same argument is also brought forward on the foregoing pages 31 and 32 of this Petition for a Writ of Certiorari.

(d) In Rowlee v. Commissioner, supra, under the heading "Factual Background" (page 1113), it states that "Petitioner exchanged his labor for checks or cash received from Anderson/Ford during that year." (emphasis added). This is not so in the case of this petition, inasmuch as this petitioner received checks from his "Contracting Parties" for the contractual sale of his property (his labor). There was no exchange; there was a sale of pro-

perty called labor. The Court's attention is respectfully directed to the immediate preceding paragraph citing those cases supporting that position.

Contrary to what the Tax Court states on page 7A, this petitioner has shown that respondent's determination of a deficiency in Federal income taxes is incorrect. The case law of Welch v. Helvering, 290 U.S.111 (1933) cited by the Tax Court on page 7A of their MEMORANDUM SUR ORDER is unrelated to this case, inasmuch as that cited case deals with business expenses and their effect on a deficiency; whereas in this petitioner's case he does not deal with business expenses, but rather with the sale of his personal property (his labor) in order to reduce the alleged deficiency. Business expenses are not the issue in this Petition for a Writ of Certiorari. Consequently, Welch v. Helvering, supra, is totally unrelated. The Tax Court's reference to Rule 142(a) of

of that Court is also inappropriate inasmuch as it states that "The burden of proof shall be upon the petitioner, except as otherwise provided by statute...." (emphasis added). The statute in this case is the Administrative Procedures Act, as so brought forward on pages 18A thru 27A (ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD), with particular emphasis on page 20A under the heading JURISDICTION CAN BE CHALLENGED ANYTIME AND MUST BE PROVEN; and again on page 19 of item (1) under the heading: ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT. Also, petitioner did not receive funds from services as a sale of personal property, as so stated in that same paragraph, but instead received checks for the contracted sale of his property (his labor). Also, this petitioner, contrary to what the Tax Court claims in that same paragraph that he did not raise those issues in the assign-

ment of errors as required by Rule 34(b)(4) of Rules of Practice & Procedure of the United States Tax Court, did in fact raise those issues. As required by Rule 34(b), each assignment of error was separately lettered a) thru g) on pages 43A-47A of this petition, and marked as EXHIBIT A, all of which issues so lettered required that the Commissioner show burden of proof. Consequently, this petitioner has not conceded the FACTUAL basis of this question as so claimed by the Tax Court.

Another allegation made by the Tax Court appears on pages 7A and 8A of the MEMORANDUM SUR ORDER, in which that Court FALSELY stated the following:

> "As stated above, we reject his attempt to place wages received for services as an equal exchange resulting in no receipt of income. In such posture, this matter is ripe for summary judgment. There is no genuine issue as to any material fact, either as to the deficiencies or the imposition of the additions to tax."(emphasis added)

In rebuttal to this totally FALSE

statement about wages, this Court needs only to refer to item 3 c) appearing on page 45A of petitioner's PETITION (marked as EXHIBIT A), under the heading ERRORS OF THE COMMISSIONER, in which the following is stated:

> "The Commissioner erred in determining that Petitioner was a bondsman or servant performing services under the direction and control of a master, and that Petitioner received compensation for such services deemed to be employee wages or income, and in which the Commissioner had an implied interest through an arrangement with the master or employer, voluntarily entered into by the Petitioner." (emphasis added),

with further referral to item (4) appearing on pages 26 thru 32 of this petition in which it clearly outlines why this petitioner does not receive wages, but instead receives checks for the contracted sale of his property (his labor), with further emphasis on page 29 in which is outlined the FACTS explaining why he could not possibly have wages received for services as an equal exchange resulting in no receipt of income;

and then followed up by item 3 j) appearing on page 48A of petitioner's PETITION (marked as EXHIBIT A), under the heading FACTS UPON WHICH PETITIONER RELIES. As to the FALSE statement that there is no genuine issue as to any material fact, the rebuttal to this appears in petitioner's PETITION on pages 42A thru 51A (marked as EXHIBIT A), the contents of which is brought forward in its entirety in this petition; thereby making it impossible to have deficiencies or additions to the tax imposed upon the petitioner inasmuch as he does not owe the taxes.

As was just covered in the immediate preceding paragraph in relation to the FALSE statement that there is no genuine issue as to any material fact, the case laws cited by the Tax Court on page 8A of their MEMORANDUM SUR ORDER relating to Graf v. Commissioner, 80 T.C. 944, 946 (1983) and Espinoza v. Commissioner, 78

T.C. 412, 416 (1982), not only state that the party moving for summary judgment has the burden of showing the absence of a genuine issue as to any material fact, but in the case of Espinoza v. Commissioner, supra, also states the following:

> "The opposing party is to be afforded the benefit of all reasonable doubt, and any inference to be drawn from the underlying facts contained in the record MUST be viewed in a light most favorable to the party opposing the motion for summary judgment." (emphasis added). See United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); American Mfrs. M. I. Co. v. American Broadcasting-Para.Th., 388 F.2d 272, 279 (2d Cir. 1967); 10 C. Wright & A. Miller, Federal Practice and Procedure: Civil, sec. 2725 (1973),....."

Since the petitioner in this case was denied the opportunity to cross-examine affiant Theresa E. Mitchell (see pages 10, 11, and item (2) starting on page 20 and ending with page 24),he is at a loss as to how he as the opposing party is afforded the benefit of all reasonable doubt; and why the FACTS contained in the record (see

pages 18A thru 27A, ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD) did not influence the OPINION of the Eleventh Circuit Court of Appeals (see pages 33A-36A) inasmuch as they AFFIRMED the Tax Court's ORDER AND DECISION (pages 1A-13A) even though/of the citing Espinoza v. Commissioner, supra, in that order states that the FACTS MUST be viewed in a light most favorable to the party opposing the motion for summary judgment. This Court's attention is also respectfully directed to pages 4 and 5 of this petition where petitioner brings forth this failure on the part of the Eleventh Circuit to consider the lack of JURISDICTION on the part of the respondent as is so documented in petitioner's ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD, previously mentioned as being covered on pages 18A-27A of this petition.

The Tax Court's statement on page 9A

of their MEMORANDUM SUR ORDER in which is cited Welch v.Helvering, supra; and Abramo v. Commissioner, 78 T.C. 154, 163 (1982) in relation to presumption of correctness about a genuine issue of material fact becomes mute for the reasons just aforementioned.

The following statement also appearing on page 9A also becomes mute for the reasons previously stated in this petition:

> "There is no issue as to the receipt of income. Petitioner has not denied the receipt of compensation for services. He has similary not raised any justiciable issues in regard to the additions to tax set forth in respondent's determination or as to the incremental amount under section 6653(a)(2) for the year 1982 as set forth in respondent's answer."

The last paragraph at the bottom of page 9A beginning with the words "With respect to the section 6651(a) addition to tax," to and including pages 10A and 11A, and ending with the words "upon notice and demand from the Secretary and shall be collected as part of the tax",(middle of the

page relating to an award of damages pursuant to the provisions of section 6673), are all inappropriate for the reasons previously and clearly covered in this petition, and due to the FACT that the filing of a federal income tax return is a voluntary action - an action this petitioner does not wish to take. Also, the following quotation appearing on pages 177A-39 and 177A-41 of the Federal Register for Wednesday the 11th of September 1946, which through research by William BENSON of South Holland, Illinois, reveals that a Treasury Form 1040 (Individual Income Tax Return) must be made on this form, unless Form W-2 (Withholding Statement) is filed:

Page 177A-39

> Form W-2. Withholding statement. This is a statement of wages paid during the calendar year and the amount of income tax withheld on such wages, if any. The original and duplicate are furnished by the employer to the employee at the close of the calendar year or upon termination of his status as an employee. The original is used as an optional income tax return by

the employee in lieu of Form 1040.
Form W-2a. This is the triplicate copy of the withholding statement, Form W-2, to be filed by the employer with the collector of internal revenue at the same time as the withholding tax return (Form W-1) for the fourth quarter of the calendar year.

Page 177A-41

Form 1040. Individual income tax return for net incomes from salaries, wages, dividends, interest, annuities and incomes from other sources regardless of amounts, for calendar or fiscal year. A return must be made on this form, unless Form W-2 is filed, by every citizen of the United States whether residing at home or abroad, and every person residing in the United States, though not a citizen thereof, having for the calendar or fiscal year a gross income equal to or in excess of the personal exemption prescribed in the revenue act applicable to the year involved.

It is my understanding that the first underlined portions of the Federal Register automatically becomes law thirty (30) days after being published. Further research by William Benson from 1946 through 1985 reveals no changes in the wording as underlined on pages 177A-39 and 177A-41 have taken place since Wednesday the 11th of

September 1946. An AFFIDAVIT of William Benson's research was filed by him on the 15th day of September 1986 with the State of Wisconsin, County of Milwaukee, and was notarized by Joseph W. Weigel, Notary Public of Milwaukee County, Wisconsin.

Since the statement appearing on page 177A-41 of the Federal Register reveals that a return on Form 1040 must be made on that form unless Form W-2 is filed; and since Forms W-2 were filed by petitioner's "Contracting Parties" for the years 1980, 1981 and 1982, the remark by the Tax Court appearing in the last paragraph on page 9A of that Court's MEMORANDUM SUR ORDER stating the following:

> "With respect to the section 6651(a) addition to tax, said section provides that in the case of a failure "to file any return * * * on the date prescribed therefor * * * unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such * * *." (emphasis added),

becomes mute due to the fact that the

Forms W-2 have been filed, thereby negating any possible additions to tax normally provided by Section 6651(a) of the Code.

For the Tax Court to state that the proceedings before it have been instituted or maintained by this petitioner primarily for delay or that his position is frivolous or groundless, and that damages not in excess of $5,000 should be awarded to the United States, is an unmitigated lie when one considers the extensive time, effort, and costs expended by this petitioner in this and other actions in an effort to receive "due process of law" in a Court whose only objective seems to be the stifling of that effort. The extensive time, effort, and costs (almost $1,000) expended by this petitioner in this Petition for a Writ of Certiorari, proceeding without counsel, should be sufficient to convince the panel of Justices of this Court that his position is not frivolous or groundless, and that at

no time did he pursue this action for the purpose of delay. The petitioner is a man of modest means, and the expenditure of almost $1,000 requires the sacrifice of a necessity or pleasure in his life.

Probably the biggest LIE that the Tax Court makes in their MEMORANDUM SUR ORDER appears on page 11A (last paragraph), and is combined in the two (2) following totally FALSE statements:

> "The claim made by petitioner in his petition and in his objection that wages he received as an employee do not constitute taxable income represents stale, old arguments which have been considered on many previous occasions." (emphasis added);
>
> "There is no question but that petitioner's position is frivolous and groundless as a matter of law." (emphasis added).

Petitioner does not claim in his petition and his objections that wages he received as an employee do not constitute taxable income, inasmuch as he clearly demonstrates to the Tax Court in his PETITION and clearly brought forward under item c)

(page 45A), item e) (page 46A), item h) (page 47A), and items j) thru n) appearing on pages 48A and 49A, that he is not an employee, and that he does not receive wages. More details relating to this totally FALSE statement can be found under item (4) appearing on pages 26 thru 32 of this petition; but in simple summation, petitioner receives checks from his "Contracting Parties" for the contracted sale of his property (his labor), and does not receive "wages as an employee".

Petitioner respectfully ask this Court to consider how his position could possibly be frivolous and groundless as a matter of law, when the law clearly states by its definition of the word "wages" that it's impossible for petitioner to be paid wages as so defined under the law (26 U.S.Code). This Court's attention is again respectfully directed to pages 26 thru 32 of this petition for a clear and complete explanation

as to why petitioner is not paid "wages as an employee", and is not an employee.

Also, the Tax Court on page 12A of their MEMORANDUM SUR ORDER alludes that petitioner questions the constitutionality of the income tax on wages; states that his contention to the contrary is frivolous; that he knew his position was groundless and frivolous; and then goes on to cite footnote 4/ appearing on page 7A of that order as grounds for those FALSE charges; followed up by case laws Rowlee v. Commissioner, supra, Grimes v. Commissioner, 82 T.C. 235 (1984), and Abrams v. Commissioner, 82 T.C. 403 (1984). In rebuttal, petitioner states the following:

The Tax Court has again LIED in alluding that petitioner ever questioned the constitutionality of the income tax on wages. This petitioner has never made that statement, and the Tax Court knows this to be true. Why would petitioner even want to

question it when he doesn't even receive "wages"? Also, the Tax Court in referring to footnote 4/, is referencing Biermann v. Commissioner, No. 84-5996 of the United States Court of Appeals for the Eleventh Circuit (see pages 28A-32A), which was subsequently cited as Biermann v. Commissioner, 769 F.2d 707 (11th Cir.1985); and in which this petitioner denied the receipt of "wages" on lines 22 and 23 appearing on page 9 of the Tax Court Trial Transcript regardless of what the Eleventh Circuit FALSELY claims in their OPINION on pages 28A and 30A that this petitioner contented that his "wages" were not "income". This petitioner challenged that LIE and other LIES also appearing on pages 28A and 30A thru a denial appearing on pages 7 and 8 of his reply brief for case No. 85-5959 with the Eleventh Circuit dated the 19th of February 1986. In the case laws of Grimes v. Commissioner, supra, and Abrams

v. Commissioner, supra, both petitioners in those cases claimed that their "wages" are not taxable income or not income subject to tax. Although the Tax Court in referencing those two (2) cites alludes that the petitioner of this petition also claims his "wages" also are not taxable income, is knowingly making a FALSE statement inasmuch as the petitioner clearly brings forth in his PETITION (pages 42A-51A) and in item 2) on page 59A (marked as EXHIBIT C) of his NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT that that which respondent refers to as income from wage and pension are actually "receipts from sales of property" (his labor). In consequence of the many FALSE charges, allegations, and statements, the award for damages in the amount of $4,000 should have been denied by the Eleventh Circuit.

(5)(continued) THE ELEVENTH CIRCUIT COURT OF APPEALS IN THEIR OPINION (PAGES 33A-36A), MARKED DO NOT PUBLISH, KNOWINGLY AND WILLINGLY

SUPPORTED THOSE FALSE CHARGES, ALLEGATIONS, AND STATEMENTS MADE BY THE UNITED STATES TAX COURT IN THEIR MEMORANDUM SUR ORDER (PAGES 3A-13A), WHICH ARE UNSUPPORTED BY THE RECORD AND FACTS OF THE CASE:

Notwithstanding all of the many documents furnished to the Eleventh Circuit in the transmission of the RECORD ON APPEAL by the Tax Court, including, but not limited to petitioner's PETITION (pages 42A-51A), petitioner's NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT (pages 58A-69A), and petitioner's MOTION TO VACATE DECISION (pages 70A-78A), all of which provided more than necessary FACTUAL documentation that the Tax Court's MEMORANDUM SUR ORDER was totally lacking in creditability; nevertheless, the Eleventh Circuit in their OPINION (pages 33A-36A, marked DO NOT PUBLISH),not only AFFIRMED the Tax Court's ORDER AND DECISION (pages 1A and 2A), but even went so far as to add a FALSE charge of their own in the form of the FALSE statement appearing in the last paragraph on

page 34A of their OPINION, in which they state the following:

> "We agree with the tax court that appellant's petition was frivolous. He presented nothing more than the repeatedly and emphatically rejected tax protester claims that money received for work does not represent wages, but only payment for the sale of property having a basis equivalent to the amounts received, and that a wage earner is not subject to the federal income tax laws."

So as not to beat a "dead horse", with the exception of that Court's remark about a wage earner, I'm sure this Court will agree that this petitioner has clearly demonstrated in this petition the FALSITY of the above statement; so, consequently, this petitioner has nothing more to add in support of his position. However, as to the remark above that the Eleventh Circuit claims was made by this petitioner that a "wage earner" is not subject to the federal income tax laws, is, as the saying goes: "the straw that broke the camel's back." Not only did this petitioner <u>not</u> make that

remark, or even allude to that possibility, since he clearly demonstrates in his PETITION (pages 42A-51A) that he is not a "wage earner", but rather a "seller of property" (his labor) through a contractual agreement with his "Contracting Parties, that remark simply demonstrates the lengths to which the Eleventh Circuit is willing to go to impose sanctions upon this petitioner in their attempt to silence him. Since this petitioner is not a "wage earner", why would he possibly make a stupid remark that a wage earner is not subject to the federal income tax laws? After making this FALSE charge, the Eleventh Circuit then goes on to award damages in the amount of $1,500 for an alleged frivolous petition citing King v. United States, 789 F.2d 883, 884-85 (11th Cir. 1986) as their basis for that amount in which they applied the average costs and attorneys' fees principle. However, since petitioner's PETITION (pages

42A-51A) is not frivolous, these damages should not have been awarded.

(6) THE 16TH AMENDMENT TO THE CONSTITUTION WAS NOT LEGALLY RATIFIED ON THE 15TH OF FEBRUARY 1913 WHEN THE SECRETARY OF STATE FALSELY CERTIFIED TO THE UNITED STATES CONGRESS THAT THE REQUIRED NUMBER OF STATES HAD PROPERLY RATIFIED THAT AMENDMENT:

The following excerpt from the Records of the National Archives in Washington, D. C., taken from page 6 of a MEMORANDUM to Secretary of State Philander C. KNOX dated the 15th of February 1913 from the Office of the Solicitor of the Department of State shows conclusively, beyond any shadow of doubt, that due to the extensive number of errors committed by the States purported to have ratified this alleged change to The Constitution, the 16th Amendment was NOT legally ratified when Secretary of State Philander C. KNOX FALSELY certified to the United States Congress that the required number of the States had properly ratified that amendment:

> "In the certified copies of the resolutions passed by the legislatures of the several states ratifying the proposed 16th amendment, it appears that only four of those resolutions (those submitted by Arizona, North Dakota, Tennessee and New Mexico) have quoted absolutely accurately and correctly the 16th amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or wording. Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording." (emphasis added).

Petitioner's MOTION TO VACATE DECISION (pages 70A-78A), marked as EXHIBIT D to the petition, in addition to the above quoted excerpt, also list all the many errors committed by the various States (beginning on page 74A) purported to have ratified the 16th Amendment. Inasmuch as the Executive, Legislative, and/or the Judicial System of our REPUBLIC has failed to take ANY action to rectify this FRAUDULENT act committed by Secretary KNOX, notwithstanding all of the

many documented errors brought forward in the aforementioned MEMORANDUM, and notwithstanding that this FRAUDULENT act is common knowledge in the courts and political arena of this great nation of ours, this petitioner, in consequence thereof, as a SOVEREIGN INDIVIDUAL to the Executive, Legislative, and Judicial branches of this REPUBLIC created by the adoption of THE CONSTITUTION OF THE UNITED STATES OF AMERICA, in which therein is stated in the PREAMBLE of that great document that it is "WE THE PEOPLE" who ordained and established THE CONSTITUTION FOR THE UNITED STATES OF AMERICA; so therefore the petitioner of this Petition for a Writ of Certiorari, as a SOVEREIGN INDIVIDUAL within that entity known as "WE THE PEOPLE", herewith
/and hereby DEMANDS that this Court declare that the 16th Amendment to The Constitution is abrogated due to the FALSE certification of Secretary of State Philander C. KNOX to

the United States Congress in 1913 that the required number of States had properly ratified that amendment; citing as their authority SECTION 2 of ARTICLE III of The Constitution, relating to the power of the Supreme Court, which is quoted herewith for the convenience of this Court:

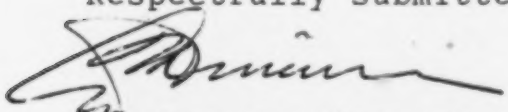
> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,....; to controversies to which the United States shall be a party;...." (emphasis added).

This Court is respectfully reminded that since the aforementioned MEMORANDUM is taken from the files of the National Archives in Washington, D.C.; as such, is "public record" information under "public domain protection"; and as such is accepted as cited evidence without the benefit of certification.

In CONCLUSION, I respectfully remind this Court of the number of violations of existing law committed by Respondent and upheld by both the Tax Court and the Eleventh

Circuit in their attempt to silence Petitioner in his pursuit of justice. The violations of those laws relating to Sections 3401(c), (d) and (a) of the Internal Revenue Code, are more than sufficient to meet the requirement as a CONSIDERATION GOVERNING REVIEW ON CERTIORARI described under Rule 17.1.(c) of the United States Supreme Court relating to an important question of federal law which has not been, but should be, settled by this Court. The salvation of our REPUBLIC is dependent upon this Court in compelling lower courts to comply with the laws as written in arriving at just decisions in support of those laws. Anything short of that can only eventually spell the complete destruction of our cherished and respected REPUBLIC!

Respectfully submitted,



William M. Biermann, Petitioner pro se
192 Park Land Drive
Lake Placid, Florida 33852
Telephone: (813) 465-5090

APPENDIX Page

ORDER AND LECISION, Docket No. 21777-84, United States Tax Court entered SEPT 24, 1985, to which is attached that Court's MEMORANDUM SUR ORDER ---------- 1A-13A

ORDER, Docket No. 21777-84, United States Tax Court dated January 22, 1986, to which is attached a document titled DEMAND MADE UPON THE CHIEF COUNSEL OF THE INTERNAL REVENUE SERVICE and "Motion to Supplement Record", attaching thereto another document titled THIS IS AN ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD --------- 14A-27A

OPINION, Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 84-5996, Aug. 26, 1985 (marked DO NOT PUBLISH). This opinion was included in the petition to this Court of a PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT on the 8th of July 1986 (No.86-19) -- 28A-32A

OPINION, Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 86-5033, August 27, 1986 (marked DO NOT PUBLISH) ---------- 33A-36A

JUDGMENT, Eleventh Circuit Court of Appeals, Biermann v. Commissioner, No. 86-5033 (T.C. No. 21777-84), entered August 27, 1986 and ISSUED AS MANDATE: SEP 19, 1986 --------- 37A-38A

NOTICE OF DEFICIENCY and*PETITION of William M. BIERMANN, United States Tax Court, Docket No. 21777-84, *dated 26 June 1984 (marked as EX-

APPENDIX Page

HIBIT A top left corner of page)-- 39A-51A

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, United States Tax Court, Docket No. 21777-84, filed MAY 13, 1985 (marked as EXHIBIT B top left corner of page) ---------- 52A-57A

Petitioner's NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, United States Tax Court, Docket No. 21777-84, dated 14 May 1985, to which is attached thereto as Exhibit B a copy of the fourteen (14) interrogatories submitted to respondent by petitioner (marked as EXHIBIT C top left corner of page)-58A-69A

Petitioner's MOTION TO VACATE DECISION, United States Tax Court, Docket No. 21777-84, filed OCT 2, 1985, denied OCT 8, 1985 by that Court (marked as EXHIBIT D top left corner of page) ---------- 70A-78A

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM M. BIERMANN,
Petitioner,

V.

Docket No. 21777-84

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ORDER AND DECISION

For reasons appearing in the Memorandum Sur Order, which is attached hereto and served herewith, it is

ORDERED that respondent's motion for summary judgment, filed May 13, 1985, is granted. It is further

ORDERED AND DECIDED that there are deficiencies in petitioner's Federal income tax and additions to tax as follows:

Year	Tax	Additions to Tax §6651(a)(1)	§6653(a)(1)	§6654
1980	$ 689	$ 172.25	$ 34.45	$ 43.99
1981	582	145.50	29.10	44.96
1982	4,705	1,173.37	235.25	457.06

plus 50 percent of the interest due on $582 and $4,705 for the taxable years 1981 and 1982, respectively, pursuant to section 6653

(a)(2); and damages are due from petitioner which are hereby awarded to the United States in the amount of $4,000, pursuant to section 6673, Internal Revenue Code of 1954, as amended.

(Signed) Helen A. Buckley

Helen A. Buckley
Special Trial Judge

Entered: SEP 24 1985

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UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM M. BIERMANN,
Petitioner,
V.
Docket No. 21777-84
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MEMORANDUM SUR ORDER

This matter was assigned pursuant to section 7456, Internal Revenue Code, and Rules 180 and 181.1/ It is before us on respondent's motion for summary judgment pursuant to Rule 121.

Respondent issued a notice of deficiency in which he determined deficiencies in petitioner's Federal income taxes as follows:

		Additions to Tax			
Year	Tax	§6651(a)(1)	§6653(a)(1)	§6653(a)(2)	§6654
1980	$ 689	$ 172.25	$ 34.45	-0-	$43.99
1981	582	145.50	29.10	2/	44.96
1982	4,705	1,173.37	235.25	3/	457.06

Respondent's determination was based upon a failure to file returns and a failure to re-

port income from wages as follows:

	1980	1981	1982
Educator Market Services	$3,284.00	-0-	-0-
Heartland Employment	2,642.00	-0-	-0-
Purolator Courier Corp.	835.89	$6,335.66	$14,783.81
	$6,761.89	$6,335.66	$14,783.81

1/ Section referenes are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. Rule referenes are to the Tax Court Rules of Practice and Procedure.

2/ 50 percent of the interest due on $582

3/ 50 percent of the interest due on $4,705.

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In addition, respondent determined that during 1980 petitioner received $126 in interest income from First Home Federal Savings. He also determined that during 1982 petitioner received $7,099.94 in pension from the Navy Finance Center/of which $6,475.82 was taxable in that year.

Petitioner timely filed his petition herein, in which he alleged he maintained a mailing address at Lake Placid, Florida. In the petition, petitioner stated that the Commissioner erred in determining that he was a person liable for income tax, that he was a bondsman or servant performing services under the direction and control of a master, that he received compensation for such services deemed to be employee wages or income, that petitioner was negligent, false or fraudulent. Petitioner went on to state that he "received various amounts shown as consideration for the contracted sale and delivery of personal property * * *. The property was acquired by gift shortly before the sale * * *. The cost basis Petitioner inherited from the donor of the property sold was unknown and undetermined."

Respondent answered and then moved for summary judgment pursuant to Rule 121(a). Petitioner, in his objection to respondent's

motion stated that respondent had in his custody W-2 Forms which are not evidentiary and which can not be admitted into evidence, that petitioner has raised a factual question by denying receipt of taxable income, that the items which respondent terms income from wage and pension are "receipts from the sales of property."

It is apparent that the petition is subject to dismissal. We note that in no place does petitioner claim that he did not receive compensation for services, nor does he deny that he received interest or the pension from the Navy Finance Center. Rather, he contents himself with the long-rejected tax protestor argument that he has received consideration for the sale and delivery of personal property, as to which he has a cost basis equivalent to the amount he received on the sale. We dealt with this argument in Reading v. Commissioner, 70 T.C. 730 (1978), affd. 614 F.2d 159 (8th Cir. 1980), then again in Row-

lee v. Commissioner, 80 T.C. 1111 (1983), as well as in memorandum decisions too numerous to mention.4/

The burden rests on petitioner to show that respondent's determination of a deficiency in Federal income taxes is incorrect. Welch v. Helvering, 290 U.S. 111 (1933);Rule 142(a). Petitioner, although he attempts in his petition and in his objection to refute respondent's determination by categorizing his receipt of funds from services as a sale of personal property, nowhere denies such a receipt. Our Rule 34(b)(4) states that "Any issue not raised in the assignment of errors shall be deemed to be conceded." It is our view that petitioner has conceded the factual basis of this question.

4/

We note that petitioner has previously been advised by this Court that his position is frivolous. See Biermann v. Commissioner, ___ F.2d ___ (11th Cir., Aug. 26, 1985, 85-2 USTC par. 9632).

As stated above, we reject his attempt

to place wages received for services as an equal exchange resulting in no receipt of income. In such posture, this matter is ripe for summary judgment. There is no genuine issue as to any material fact, either as to the deficiencies or the imposition of the additions to tax.

Rule 121 provides that a party may move for summary judgment on all or any part of the legal issues in controversy so long as there are no genuine issues of material fact. Rule 121(b) states that a decision shall be rendered "if the pleadings * * * and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law." The burden of proving that there is no genuine issue of material fact is on the moving party. Graf v. Commissioner, 80 T.C. 944, 946 (1983); Espinoza v. Commissioner, 78 T.C.

412, 416 (1982).

A motion for summary judgment will permit a judgment in respondent's favor based upon his presumption of correctness unless the nonmoving party introduces evidence in his pleadings or otherwise to show that there is a genuine issue of material fact. Welch v. Helvering, supra; Abramo v. Commissioner, 78 T.C. 154, 163 (1982).

There is no issue as to the receipt of income. Petitioner has not denied the receipt of compensation for his services. He has similarly not raised any justiciable issues in regard to the additions to tax set forth in respondent's determination or as to the incremental amount under section 6653(a)(2) for the year 1982 as set forth in respondent's answer.

With respect to the section 6651(a) addition to tax, said section provides that in the case of a failure "to file any return * * * on the date prescribed therefor

* * * unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return * * *." Petitioner has not contended that he in fact filed returns. Neither has he set forth any reasonable causes for such failures. His erroneous allegations as to the nature of income clearly fail to meet any standard of reasonable cause.

Petitioner has not raised any justiciable issue with respect to the various additions to tax under section 6653(a) imposed where an underpayment is due to negligence. Bixby v. Commissioner, 58 T.C. 757, 791 (1972). Such issues not raised shall be deemed conceded. Jarvis v. Commissioner, 78 T.C. 646, 658 (1982). So too the addition to tax imposed by section 6654 for failure to pay estimated income tax. Therefore, respondent's motion for

summary judgment is granted in all respects.

We now consider, on our own motion, the question of an award of damages pursuant to the provisions of section 6673. That section provides as follows:

> Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarly for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary and shall be collected as part of the tax.

The claim made by petitioner in his petition and in his objection that wages he received as an amployee do not constitute taxable income represents stale, old arguments which have been considered on many previous occasions. There is no question but that petitioner's position is frivolous and groundless as a matter of law. We give consideration to the fact that petitioner is apparently a lay person. See, e.g.,

Stelly v. Commissioner 761 F. 2d 1113 (5th Cir. 1985). However, we also give consideration to the fact that he has forwarded to us copies of requests for interrogatories directed to respondent in which he cites statutes, Rules of this court and cases. Yet, nowhere does he cite the multitude of cases which have directly held his theories to be incorrect. "Every court that has adressed the issue of the constitutionality of the income tax on wages, * * * § 61(a), has held the statute valid. The (petitioner's) contention to the contrary is frivolous." Stelly v. Commissioner, supra. Petitioner knew that his position was groundless and frivolous. (See n. 4.) Rowlee v. Commissioner, supra; Grimes v. Commissioner, 82 T.C. 235 (1984); Abrams v. Commissioner, 82 T.C. 403 (1984). The time of the Court has once again been diverted by petitioner from the matters of petitioners who have valid controversies

before this Court. We award to the United States damages in the amount of $4,000.

(Signed) Helen A. Buckley

Helen A. Buckley
Special Trial Judge

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

WILLIAM M. BIERMANN,
Petitioner,

V.

Docket No.
21777-84

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

O R D E R

On December 18, 1985, the Court receiv- a document labelled "Demand Made Upon the Chief Counsel of the Internal Revenue Service," which the Clerk of the Court is directed to file as of that date as a "Motion to Supplement Record." Petitioner attached thereto a document titled "This is an Administrative Law Appeal Demand to Prove Jurisdiction on Administrative Record." This case now being in the Court of Appeals for the Eleventh Circuit and within the intendment of Rule 10(e), Federal Rules of Appellate Procedure, it is

ORDERED that petitioner's motion is granted, and the Clerk of the Court is directed to transit to the Court of Appeals

for the Eleventh Circuit for inclusion in the record of this case on appeal, a certified supplemental record which is to include (1) the original of this Order, and (2) petitioner's Motion to Supplement Record, to which is attached petitioner's document labelled "This is an Administrative Law Appeal Demand to Prove Jurisdiction on Administrative Record."

(Signed) Helen A. Buckley

Special Trial Judge

Dated: Washington, D. C.
January 22, 1986

Form 50
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UNITED STATES TAX COURT

WILLIAM M. BIERMANN,	)	
Petitioner,	)	
v.	)	Docket No.
COMMISSIONER OF INTERNAL REVENUE	)	21777-84
Respondent.	)	

DEMAND MADE UPON THE CHIEF COUNSEL
OF THE INTERNAL REVENUE SERVICE

To comply with Rules 23 and 32(a) of Rules of Practice & Procedure of the United States Tax Court, the following document is transmitted herewith to be included in the Record under Docket No. 21777-84, and is to be incorporated in the Record on appeal to be forwarded to the Eleventh Circuit Court of Appeals at the time of appeal:

ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD

The Court's attention is respectfully directed to the closing paragraph of the foregoing document.

/s/
W. M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852
(813) 465-5090

Date: 16 December 1985

UNITED STATES
TAX COURT

F I L E D

DEC 18 1985

"Motion to Supplement Record"

CERTIFICATE OF SERVICE

This is to certify that the foregoing document has been served on the parties named, in the United States Mail, in a postage paid wrapper to the addresses shown, and on the following date:

Clerk, United States Tax Court (Original, plus 4 copies)
400 Second Street, N.W.,
Washington, D.C. 20217

W. Preston White, Jr.,
District Counsel
Theresa E. Mitchell
Attorney
Internal Revenue Service
1502 Federal Office Building
51 S.W. First Avenue
Miami, Florida 33130

/s/ W. M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852

DATE: 16 December 1985

THIS IS AN ADMINISTRATIVE LAW APPEAL
DEMAND TO PROVE JURISDICTION
ON ADMINISTRATIVE RECORD

From: William M. BIERMANN
192 Park Land Drive
Lake Placid, Florida
33852

Date: 10 December 1985

Certified Mail
P 749 206 998
(return receipt requested)

To: Roy S. FISHBACH
Chief Counsel
INTERNAL REVENUE SERVICE
Box 35027, Federal Building, 400 W. Bay Street, Jacksonville, Florida 32202

Ref: DEMAND for you to prove the existence of JURISDICTION at the administrative level on the Administrative Record. The U.S. Administrative Procedures Act and the Uniform Commercial Code govern this case.

PURPOSE OF THIS INSTRUMENT

This instrument is being submitted to CHALLENGE your JURISDICTION over my person, property and interests, since I am a non-juristic "free person". This is also a DEMAND that you show proof on the Administrative Record of your asserted JURISDICTION. This is also submitted to protect and enforce my substantive common law rights and immunities, and to exhaust my administrative remedies in preparation for judicial review in the

courts upon direct attack at the appeals level. The U.S. Administrative Procedures Act and the Uniform Commercial Code govern this case, and Administrative Agency INTERNAL REVENUE SERVICE is bound by the Administrative Procedures Act and the Uniform Commercial Code.

YOUR RESPONSE

The law requires that you and only you answer this law demand in a timely, material and substantive form, inasmuch as only you can commit the institution of your agency to any position as to procedure, law, fact, equity, jurisdictional facts, or other substantive issues (U.S. v. LaSalle Bank, S. Ct. 1978); and no delegate is acceptable for purposes of responding to or answering this instrument.

On the 2nd of April 1984, Administrative Agency INTERNAL REVENUE SERVICE issued a letter in which it was determined that there is a deficiency in my income tax for the years 1980, 1981 and 1982. What proof

of JURISDCTION over my person, property and interests was on the Administrative Record when this letter of deficiency was issued?

JURISDICTION CAN BE CHALLENGED ANYTIME AND MUST BE PROVEN

This instrument is being submitted for you to PROVE the exisence of JURISDICTION over my person, property and interests on the Administrative Record. Now, that I am challenging your JURISDICTION, you must affirmatively and positively on the Record, plead and prove it. Thus, I deny, challenge, and put you to the PROOF on the administrative record of your supposed or claimed JURISDICTION over my person, property and interests at the administrative level. Upon challenge, the Administrative Agency has the BURDEN OF PROOF. (Administrative Procedures Act).

YOUR ASSERTION OF JURISDICTION

Your assertion of JURISDICTION over my person, property and interests was merely as-

sumed. You, as an Agency cannot "bootstrap" yourself into an area in which you have no JURISDICTION (U.S. v. Seatrain, 93 S.Ct. 1773); for long adherence to an improper ruling gives agency no vested right to continue such a fraudulent practice (Flotill v. U.S., 358 F 20 607); for violation of administrative rules by an administrative agent is a violation of the statute (Jeffries v. Olessen, 121 F. Supp. 463), and denies due process at the same time (U.S. v. Capra, 372 F. Supp. 609).

You, Administrative Agency INTERNAL REVENUE SERVICE, know because of your position as an administrative agency that your alleged PROOF there is a deficiency in my income tax for the years 1980, 1981 and 1982 must be on the administrative record when you made that determination. You asserted JURISDICTION over my person, property and interests without PROOF of anything.

MY ACTIONS DO NOT CREATE JURISDICTION

My acts do not create substantive JURISDICTION, but only an appearance of JURISDICTION, a matter of form only (substance governing over form). Any past act, such as failure to follow procedure or challenge your asserted JURISDICTION over me, occurred only under mistake of jurisdictional fact, mistake of fact, misrepresentation, duress, incapacity and other validating and invalidating causes. There is no "substantial nexus" (contract-agreement) that exists between myself and Administrative Agency INTERNAL REVENUE SERVICE. I am immune as an unenfranchised "free person" to any type of forced contractual obligation.

STATUTES DO NOT CREATE JURISDICTION

Statutes do not create JURISDICTION, and when statutes compel performance, there must be a valid contract. Administrative Agency INTERNAL REVENUE SERVICE has been citing the 16th Amendment to The Constitution as authority to ride rough shod over

the citizens of this Nation. However, recent certified documents with official seals have been allowed as evidence in Court showing that the 16th Amendment was not ratified. Doesn't Administrative Agency INTERNAL REVENUE SERVICE have some explanation?

DEMAND FOR REMEDY AND RELIEF

You must show PROOF on the Administrative Record that there is a deficiency in my income tax for the years 1980, 1981 and 1982, and that such liability on my part to file an income tax return existed at that time when you issued your letter on the 2nd of April 1984 in which it was dedetermined that such a deficiency existed. This includes official sworn statements in writing by these officials on the Adminis- Record with their current residence address so that I may have sufficient opportunity on the Record to a complete rebuttal of the charges against me, as well as new questions

that I was never able to ask, for I was not granted a sufficient nor adequate opportunity to even address my accusers properly.

You must provide a copy of the Administrative Record concerning myself with PROOF of Administrative Agency INTERNAL REVENUE SERVICE JURISDICTION over my person, property and interests. This official notice to you that you have acted outside your JURISDICTION is notice that you can no longer claim you are acting in good faith, for mere good faith assertions of JURISDICTION are no longer valid now that the challenge is on the Record. The Administrative Agency INTERNAL REVENUE SERVICE and its agents are not immune to acts committed outside their JURISDICTION.

You must show PROOF on the Administrative Record of any perpetual agreement or contract between Administrative Agency INTERNAL REVENUE SERVICE and myself that was entered into KNOWINGLY, VOLUNTARILY and UN-

DERSTANDING all the ramifications, with no concealment of material facts by the agency. "For no man can be held liable on a contract to which he was not a knowing, willing, voluntary party thereto." (Swanson v. Fulline 248 F. Supp.) and (Uniform Commercial Code). It is requested that you notify the United States Tax Court that you had no PROOF of your asserted JURISDICTION over my person, property and interest when you issued your letter on the 2nd of April 1984 in which it was determined there is a deficiency in my income tax for the years 1980, 1981 and 1982, or that liability on my part to file an income tax return existed at that time. If I do not hear from you within ten days from receipt of this certified document with PROOF of Administrative Agency INTERNAL REVENUE SERVICE JURISDICTION over my person, property and interests on the Administrative Record, it will be admission of NO JURISDICTION.

I, William M. BIERMANN, state that this ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD is true and correct to the best of my knowledge and belief.

I, William M. BIERMANN, further state that a copy of this ADMINISTRATIVE LAW APPEAL DEMAND TO PROVE JURISDICTION ON ADMINISTRATIVE RECORD has been provided by me to the United States Tax Court for inclusion in the Record under Docket No. 21777-84.

Dated this 10th Day of December 1985.

/s/ William M. Biermann

STATE OF FLORIDA
COUNTY OF HIGHLANDS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared William M. Biermann to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 10th Day of December 1985.

SEAL

/s/ Vanessa G. Wilson

MY COMMISSION EXPIRES:

Notary Public, State of Florida At Large, My Commission Expires June 21, 1989, Bonded By Lawyers Surety Corp.

(Referenced in MEMORANDUM SUR ORDER of U.S.Tax Court ORDER AND DECISION entered Sep 24,1985(Docket No. 21777-84) under Footnote 4/)

William M. BIERMANN,
Petitioner-Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE, Respondent-Appellee.

No. 84-5996

United States Court of Appeals,
Eleventh Circuit.

Aug. 26, 1985.

Taxpayer appealed from a decision of the United States Tax Court in favor of the Commissioner of Internal Revenue finding taxpayer liable for tax deficiencies and additions to tax for the years 1978 and 1979. The Court of Appeals held that: (1) monies received by taxpayer constituted taxable income notwithstanding taxpayer's contentions that monies he received should not be considered income because Internal Revenue Code did not define "income", that his wages were not "income," that he was not a "person liable for taxes," but rather a freeman and unenfranchised individual who was not subject to taxation and that he was not an "employee" subject to withholding

within meaning of Internal Revenue Code, and (2) Government would be awarded double costs and reasonable attorney fees incurred for cost of defending an appeal by a taxpayer who was well warned by Tax Court that his positions were frivolous beyond doubt and had consistently been rejected by courts at every level of review.

Affirmed and remanded.

On Appeal from the Decision of the United States Tax Court.

Before TJOFLAT, HILL and ANDERSON, Circuit Judges.

PER CURIAM:

(1) This is a so-called "tax protest" case which appellant Biermann challenges the decision of the Tax Court in favor of the Commissioner of Internal Revenue ("Commissioner") finding Biermann liable for tax deficiencies and additions to tax for the years 1978 and 1979. Biermann does not dispute the amounts of wages, interest and other in-

come that the Commissioner claims he received in these years. Moreover, the parties stipulated both orally and at trial as to the deductions that Biermann was entitled to for the years in question. His sole claims are that (1) the monies he received should not be considered income because the Internal Revenue Code does not define "income"; (2) his wages are not "income"; (3) he is not a "person liable for taxes", but rather a "freeman and unenfranchised individual" who is not subject to taxation; and (4) he was not an "employee" subject to withholding within the meaning of the Internal Revenue Code and that, therefore, the withholding from his wages were illegal "taxes" assessed against him. These arguments are patently frivolous, have been rejected by courts at all levels of the judiciary, and, therefore, warrant no further discussion. The judgment on the Tax Court is AFFIRMED.

(2) In addition, the Commissioner urges this court to award double costs and attorney's fees under Fed.R.App.P. 38. The Tax Court concluded that Biermann's position was "patently ridiculous (a)nd will not prevail in any Court." Record, Doc. 16 at 27; see also id. at 24 ("your position is frivolous without merit. Will never be sustained in this or any other Court. You are wasting your time. You are costing yourself money"). The court decided, "however, ... for reasons I don't fully understand myself, I am not going to impose a fine." Id. at 28. Although the Tax Court did not impose a penalty, compare Waters v. Commissioner, 764 F.2d 1389 (11th Cir. 1985) (double costs and attorney's fees on appeal awarded after the Tax Court had imposed a $2,500 frivolity penalty), we believe that Biermann was well warned by the Tax Court that his positions were frivolous beyond doubt and had consistently been rejected by courts at every level of review.

Biermann was duly warned and should have been aware of the consequences of taking up the government's and this court's time with this appeal. We therefore find it appropriate to exercise our discretion under Fed. R.App.P. 38 to AWARD double costs to the government and reasonable attorney's fees incurred for the cost of defending this appeal. We REMAND to the tax court for a determination of such reasonable attorney's fees.

AFFIRMED and REMANDED

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-5033
Non-Argument Calendar

WILLIAM M. BIERMANN,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the Decision of the United States Tax Court

(August 27, 1986)

Before TJOFLAT, HATCHETT and CLARK, Circuit Judges.

PER CURIAM:

This is an appeal from the tax court's judgment, entered on the Commissioner's motion for summary judgment, determining deficiencies and additions to tax against appellant for his 1980, 1981, and 1982 tax years and assessing fifty percent interest on the deficiencies for 1981 and 1982. In reaching its decision, the tax court held that appellant's petition to the court (seeking a declaration that the Commissioner's determination of deficiencies and penalties was erroneous) was frivolous and that appellant must pay damages to the United States pursuant to Section 6673 of the Internal Revenue Code in the sum of $4,000.

We agree with the tax court that appellant's petition was frivolous. He presented nothing more than the repeatedly and emphatically rejected tax protester claims

that money received for work does not represent wages, but only payment for the sale of property having a basis equivalent to the amounts received, and that a wage earner is not subject to the federal income tax laws. Appellant did not contest the amount of money the Commissioner determined to be his income; he only contested the Commissioner's characterization of such income. The grant of summary judgment plainly was in order.

Appellant's appeal is equally frivolous, and the Commissioner urges us to impost sanctions. We have done so, assessing double costs and an attorney's fee, where, as here, the taxpayer prosecutes a frivolous appeal. Biermann v. Commissioner, 769 F.2d 707, 708 (11th Cir. 1985) (where this appellant presented arguments similar to those he asserts here). Usually, we remand the case to the tax court for a determination of the attorney's fee, but on oc-

casion, to conserve judicial resources, we have set the amount ourselves. King v. United States, 789 F.2d 883, 884-85 (11th Cir. 1986). We chose to do so in this instance. The Commissioner requests a damages award of $1,500, representing that the average costs and attorneys' fees incurred by him in a case such as this are $1,422. Appellant has not contested such figures. Accordingly, we award the Commissioner damages, in lieu of costs and attorneys'f fees, of $1,500.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-5033
Non-Argument Calendar

T.C. No. 21777-84

WILLIAM M. BIERMANN,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Appeal from the Decision of the United States Tax Court

Before TJOFLAT, HATCHETT and CLARK, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States Tax Court, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now

here ordered and adjudged by this Court that the decision of the Tax Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that petitioner-appellant pay to respondent-appellee, damages in the amount of $1,500.

Entered: August 27, 1986
For the Court: Miguel J. Cortez, Clerk

By: /s/ Warren A. Godfrey
Deputy Clerk

ISSUED AS MANDATE: SEP 19 1986

Internal Revenue Service
District Director

Department of the Treasury

436

Date: APR 2 1984

Social Security or Employer Identification Number:
272-12-1562

Person to Contact:
J. D'Addario
Contact Telephone Number:
904-791-2949

Tax Year Ended and Deficiency:

See Attached Statement

Mr. William M. Biermann
192 Parkland Drive
Lake Placid, Florida 33852

Letter 531(DO) (Rev.3-81)

Sir:

We have determined that there is a deficiency (increase) in your income tax as shown above. This letter is a NOTICE OF DEFICIENCY sent to you as required by law. The enclosed statement shows how we figured the deficiency.

If you want to contest this deficiency in court before making payment, you have 90 days * * * If you decide not to sign and return the statement and you do not timely petition the Tax Court * * * If you have any questions, please contact * * *.

Sincerely yours, /s/ Roscoe L. Egger, Jr.
By /s/ Merlin W.Heye Commissioner
District Director,400 Bay St.,Jacksonville,Fla. 32202

Mr. William M. Biermann

(EXHIBIT A)

STATEMENT

Tax Year Ended	Deficiency	Delinquency Penalty Sec. 6651(a)(1)	Negligence Penalty Sec. 6653(a)	Negligence Penalty Sec. 6653(a)(1)	Negligence Penalty Sec. 6653(a)(2)
12/31/80	$ 689.00	$ 172.25	$34.45	-	-
12/31/81	$ 582.00	$ 145.50	-	$ 29.10	50% of the interest due on $582.00
12/31/82	$4,705.00	$1,173.37	-	$235.25	50% of the interest due on $4,705.00

Tax Year Ended	Estimated Tax Penalty Sec. 6654
12/31/80	$ 43.99
12/31/81	$ 44.96
12/31/82	$457.06

Form 5278 DeptTreas-IntRevService
Rev.Sept 1980 Statement-Income Tax Changes

Return Form No. 1040
Notice of Deficiency

Name of Taxpayer
Mr. William M. Biermann

(DUE TO SPACE LIMITATION BECAUSE OF THE SIZE OF FORM 5278 ONLY THOSE ITEMS THAT INDICATE DOLLAR AMOUNTS ARE SHOWN BELOW)

1.Adjustments to income	(I) 12/31/80	(II) 12/31/81	(III) 12/31/82
a.Wages	$6,761.89	$6,335.66	$14,783.81
b.Pension	-0-	-0-	6,475.82
c.Interest Income	126.00	-0-	-0-
d.Exemption	(1,000.00)	(1,000.00)	(1,000.00)
2.Total adjustments	5,887.89	5,335.66	20,259.63
4.Taxable income as revised	5,887.89	5,335.66	20,259.63
5.Tax from Tax tables	689.00	582.00	4,705.00
12.Total corrected income tax liab.	689.00	582.00	4,705.00
14.Increase in tax	689.00	582.00	4,705.00
15.Additions to tax			
	(1)		
DelPen-Sec.6651(a)	$172.25	$145.50	$1,173.37
NegPen-Sec.6653(a)	$ 34.45	-	-
NegPen-Sec.6653(a)(1)	-	$ 29.10	$ 235.25
EstTaxPen-Sec.6654	$ 43.99	$ 44.96	$ 457.06

UNITED STATES TAX COURT

WILLIAM M. BIERMANN	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No.
	)	21777-84
COMMISSIONER OF INTERNAL REVENUE	)	
	)	
	)	
Respondent.	)	

PETITION

PLEASE TAKE NOTICE: Petitioner, above named, petitions this Court to redetermine alleged deficiencies in alleged income tax as herein identified.

FOR CAUSE, Petitioner shows the Court:

1) Petitioner is a natural, private individual who currently maintains a mailing address of 192 Park Land Drive, Lake Placid, Florida 33852, and who previously maintained a mailing address of 192 Park Land Drive, Lake Placid, Florida 33852, for the years 1980, 1981 and 1982 at issue herein.

2) Petitioner's social security number is 272-12-1562.

3) The alleged Notice of Deficiency at

issue was dated April 2, 1984, and bears an address of an office of the Commissioner located in Jacksonville, Florida. A copy of the cover page of this notice, plus a copy of IRS Form 5278, which represents material for establishing jurisdiction, is attached hereto as Exhibit A. Such exhibit shall not operate as an admission of the truth or correctness of any of the allegations made therein.

ERRORS OF THE COMMISSIONER

a) The Commissioner erred in determining the alleged deficiencies in alleged income taxes, shown and listed in Table 1, each of which items, and their written description is hereby placed into dispute.

(DUE TO SPACE LIMITATION SEE THE FOLLOWING PAGE FOR THE ERRONEOUS ITEMS IN THE DEFICIENCY UNDER TABLE 1 OF THIS PETITION)

TABLE 1 -- ERRONEOUS ITEMS IN THE DEFICIENCY

DESCRIPTION OF ITEM	AMOUNT: 12/31/80	AMOUNT: 12/31/81	AMOUNT: 12/31/82
Wages	$6,761.89	$6,335.66	$14,783.81
Pension			6,475.82
Exemption	(1,000.00)	(1,000.00)	(1,000.00)
Total adjustments	5,887.89	5,335.66	20,259.63
Taxable income as revised	5,887.89	5,335.66	20,259.63
Tax from tax tables	689.00	582.00	4,705.00
Corrected tax liability	689.00	582.00	4,705.00
Balance	689.00	582.00	4,705.00
Total corrected income tax liability	689.00	582.00	4,705.00
Increase in tax (deficiency)	689.00	582.00	4,705.00
Penalty - Section 6651(a)(1)	172.75	145.50	1,173.37
Penalty - Section 6653(a)	34.45		
Penalty - Section 6653(a)(1)		29.10	235.25
Penalty - Section 6654	43.99	44.96	457.06

b) The Commissioner erred in determining that Petitioner was a person liable for income tax without basis in FACT in the record; and further erred in determining that fictions of filing status and of income could be utilized to deny and disparage Petitioner's substantive rights, privileges and immunities.

c) The Commissioner erred in determining that Petitioner was a bondsman or servant performing services under the direction and control of a master, and that Petitioner received compensation for such services deemed to be employee wages or income, and in which the Commissioner had an implied interest through an arrangement with the master or employer, voluntarily entered into by the Petitioner.

d) The Commissioner erred in determining that Petitioner failed or was not timely in fulfilling alleged and known duties and obligations, or that he was in

any way negligent, or that an underpayment of tax occurred, or that any FACTS he provided were false or fraudulent, or that he was subject to any penalty for his rightful conduct.

e) The Commissioner erred in determining that certain forms W-2, issued by contracting parties under Petitioner's name accurately described FACTUAL matters relevant and material to alleged deficiencies and alleged income taxes of Petitioner.

f) The Commissioner erred in knowingly and deliberately making false allegations into deceptions and fictions, cloaking them by color of law with the presumption of FACT and the presumption of correctness, and then proceeded to determine alleged deficiencies that are self-serving, erroneous, false and fraudulent.

g) The Commissioner erred by knowing misapplication of the law that was deliberatly injurious, materially prejudicial, and

done in bad faith. Further, the Commissioner fraudulently asserted the application of law and rules upon the Petitioner that were never published, noticed, or made effective according to law.

FACTS UPON WHICH PETITIONER RELIES

h) Petitioner hereby summarizes the items and amounts of his receipts, costs, and expenses relevant and material to a correct computation of income.

TABLE 2 -- RECEIPTS, COSTS, AND EXPENSES

DESCRIPTION OF ITEM	AMOUNT:1980	AMOUNT:1981	AMOUNT:1982
Receipts from sales of property	$6,762.82	$8,281.10	$22,323.05
Substitute cost basis	6,762.82	8,281.10	22,323.05
Receipts from Savings & Loan	126.63	none	none
Expenses incurred, property sales	908.02	952.95	1,068.95
Real estate taxes	93.22	none	none
State sales tax	72.00	75.00	156.00
Taxes withheld from checks	none	none	11.52

i) Petitioner is a natural, private, sovereign individual. He conducts his affairs pursuant to common right as a sole proprietor, not for any purpose of commerce or objective for profit, and not upon any knowing request, receipt, or exercise of government privilege, franchise, and benefit.

j) Petitioner received various amounts shown as consideration for the contracted sale and delivery of personal property, as shown in Table 2 above. The property was acquired by gift at or shortly before the sale, and was not held as capital.

k) The cost basis Petitioner inherited from the donor of the property sold was unknown and indeterminable. A substituted cost basis was determined for each of the properties to be equal to their fair market value just before the sale, corresponding to the time the properties were acquired by,

and in the hands of the donor, and as shown in Table 2 above.

1) The amounts received by Petitioner from the sale of property were received as consideration pursuant to a voluntary contractual relationship with other competent contracting parties, and was in part expressed, implied or both.

m) The expenses incurred by Petitioner in the receipt, sales, and deliveries of the personal property, and in the conduct of his natural and private life, are summarized in Table 2 above.

n) The W-2 forms utilized by the Commissioner herein as a basis, contain a scheme for fictions and deceptive classifications that is potentially fraudulent, created by the Commissioner upon self-serving and circular conclusions, and made solely for tax purposes, and not as any part of the normal business purpose or records of any of Petitioner's contracting

parties.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Petitioner prays this Court enter and order and decision for Petitioner redetermining the alleged and erroneous deficiencies in alleged income taxes according to the Court's findings of FACT and conclusions of law; and

MAKE a finding of FACT upon the admissions, stipulations, and the preponderance of the evidence presented at trial, that the basis of the Commissioner for the alleged deficiencies are erroneous, self-serving, false, and fraudulent, and that the Commissioner's misapplication of the law in this case was deliberate, materially prejudicial, and in bad faith; and

AWARD Petitioner his refund of taxes paid (where applicable), his costs, disbursements, and quantum meruit, and award Petitioner such statutory penalties as are provided by law, and with such other relief

as the Court finds just.

Respectfully submitted,

/s/ William M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852 Date: 26 June 1984
Telephone No. (813) 465-5090

Attachments: Exhibit A, comprised of a copy of the cover page from alleged Notice of Deficiency, to which is attached a copy of IRS Form 5278; Money order for $60.00 filing fee. (American Express #04-159,419,294)

CERTIFICATE OF SERVICE

This is to certify that the signed and dated original and two dated copies of this PETITION, accompanied by a money order in the amount of $60.00 were mailed by CERTIFIED MAIL # P373 383 574, RETURN RECEIPT REQUESTED, to the Clerk, United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217, on the date shown below.

/s/ William M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852 Date: 26 June 1984

UNITED STATES TAX COURT

WILLIAM M. BIERMANN, Petitioner,	)	
v.	)	Docket No.21777-84
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	UNITED STATES TAX COURT FILED MAY 13 1985

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

THE RESPONDENT MOVES, pursuant to Rule 121(a) of the Tax Court's Rules of Practice and Procedure that the Court grant summary judgment in favor of the respondent on all the issues presented by the above entitled case, and find in its order that there is due from the petitioner deficiencies in income taxes and additions to the taxes under I.R.C. Section 6651(a)(1), 6653(a), 6653(a)(1), and 6654 for the years 1980 through 1982, inclusive, in the amounts set forth in the statutory notice of deficiency dated April 2, 1984 and attached hereto as Exhibit A, upon which notice the above entitled case is based.

IN SUPPORT THEREOF, the respondent repectfully shows unto the Court:

1) On June 29, 1984, the petitioner filed a "petition" with this Court and alleged a disagreement with the notice of deficiency, in which the respondent determined that the petitioner's wages, interest income, and pension income received in the years 1980 through 1982 were taxable income to the petitioner. The petitioner received wages, interest income, and pension income during the years 1980 through 1982 inclusive as follows:

Year	Payor	Type of Income	Taxable Amount
1980	Purolator Courier Corp.	Wages	$ 835.89
	Educator Market Services	Wages	3,284.00
	Heartland Employment	Wages	2,642.00
	First Home Federal Savings	Interest	126.00
1981	Purolator Courier Corp.	Wages	6,335.66
1982	Purolator CrCorp	Wages	14,783.81
	Navy Finance Cent.	Pension	6,475.82

2) The respondent has documentary evidence of the wages, interest income, and pension income received by the petitioner during the years 1980 through 1982, inclusive, which may be introduced into evidence should a hearing on this motion be necessary.

3) The petitioner has raised no factual objection denying receipt of the above cited income in the taxable years 1980 through 1982,inclusive, but instead alleges: (a) he is not a person liable for income tax; (b) he conducts his affairs pursuant to a common right as a sole proprietor, not for any purpose of commerce or objective for profit, and not upon any knowing request, receipt, or exercise of government privilege, franchise, and benefit; (c) he received the various amounts shown as consideration for the sale and delivery of personal property (his labor) acquired by gift at or shortly before the sale; (d) his

cost basis inherited from the donor of the donor of the property sold was unknown and indeterminable and a substituted cost basis was determined for the property equal to the fair market value just before the sale; (e) the amounts received from the sale of property were received as consideration pursuant to a voluntary contractual relationship with other competent contracting parties; (f) expenses were incurred in the receipt, sales, and deliveries of the personal property, and in the conduct of his natural and private life.

4) The petitioner's objections to filing a Federal income tax return and to the payment of income tax have been pressed upon the Tax Court countless times in recent years and have been universally rejected.

5) The petitioner has made no objections to the respondent's determination of tax deficiencies and additions to the tax owed by petitioner for the taxable years

1980 through 1982, except the type of frivolous arguments raised by his petition.

6) In similar cases where the respondent has sought to dismiss an action through summary judgment because there were no issues of material fact in dispute, this Court has approved the assertion of additions to the tax under I.R.C. Sections 6651(a)(1) and 6653(a) where the petitioners have not alleged specific facts to support their position that no addition to tax is warranted except their objection on moral, religious, or frivolous constitutional grounds to paying federal income taxes. Hatfield v. Commissioner, 68 T.C. 895 (1977); Wright v. Commissioner, T.C.M. 1981-65; Evans v. Com- T.C.M. 1981-580.

7) The petition filed in this case does not allege any justiciable error with respect to the respondent's determinations in the notice of deficiency, and no justiciable facts in support of such error are

extant therein as required by Rule 34(b)(4) and (5).

8) Based upon the foregoing it is respondent's belief that there are no genuine issues as to any material facts left for trial.

9) Respondent's trial attorney, Theresa E. Mitchell, has executed an affadavit in accordance with Rule 121(d) of the Tax Court's Rules of Practice and Procedure, which affidavit is attached hereto as Exhibit B to this motion.

10) Petitioner's case has been at issue more than 30 days. Petitioners case does not appear on a Trial Status Request, therefore, the Tax Court's consideration of this motion will not delay a trial, if required. This motion is timely pursuant to Tax Court Rule 121(a).

WHEREFORE, it is prayed that this motion be granted.

FRED T. GOLDBERG, JR.Chief Counsel Internal Revenue Service By: /s/ DAVID R. SMITH
Acting District Counsel

UNITED STATES TAX COURT

WILLIAM M. BIERMANN Petitioner, v. COMMISSIONER OF INTERNAL REVENUE Respondent.	)	Docket No. 21777-84

NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

THE PETITIONER OBJECTS to the RESPONDENT'S MOTION FOR SUMMARY JUDGMENT in the above-entitled case.

IN SUPPORT THEREOF, the petitioner respectfully shows unto the Court the following:

1) The respondent is in error when stating in item #2 of the Motion for Summary Judgment that respondent has documentary evidence of the wages and pension income received by the petitioner during the years 1980 through 1982. What respondent is in possession of are self-serving forms commonly entitled W-2 Forms, which have been

prepared by petitioner's Contracting Parties, the preparer's of which are merely completing self-serving labels on these forms required by the respondent, which by no stretch of the imagination can be considered to be evidentiary, but instead are merely conclusions of law; and as such, can not be entered into evidence, inasmuch as petitioner's Contracting Parties are not permitted by law to make conclusions of law. Therefore, the Commissioner erred in determining that those W-2 Forms issued by petitioner's Contracting Parties under petitioner's name accurately describe FACTUAL matters relevant and material to alleged deficiencies.

2) The respondent is also in error in stating in item #3 of the Motion for Summary Judgment that petitioner has raised no factual objection denying receipt of income in the taxable years 1980 through 1982, when in fact, petitioner has clearly demon-

strated that, that which respondent refers to as income from wage and pension are actually "receipts from sales of property", and which is specified in item "h" of petitioner's PETITION under the heading "FACTS UPON WHICH PETITIONER RELIES", a copy of which is attached hereto as Exhibit A. Respondent has also erred in item # 3 of his motion by failing to accurately report petitioner's position as it relates to the FACTS so specified in his PETITION, by leaving out key words or phrases such as "contracted" or "and was not held as capital."

3) Respondent has continuously failed to produce any FACTS in the record to indicate petitioner to be a person liable for the payment of income tax.

4) Respondent's statement in item #6 of his Motion for Summary Judgment in which he alludes that petitioner has made an objection to the payment of income taxes on

the basis of moral, religious, or frivolous constitutional grounds, is a blatant lie, inasmuch as their is nothing in the record to indicate that petitioner has ever taken a position based on any of those grounds.

5) Although petitioner has demonstrated his willingness to cooperate with respondent by meeting with Affiant Theresa E. Mitchell on the 18th of April 1985 in Miami, Florida, necessitating that petitioner travel a total distance of almost 300 miles in order to keep that meeting, Affiant failed to answer any of the interrogatories presented by petitioner during that meeting, and has further failed to answer petitioner's follow-up written interrogatories mailed to respondent on the 24th of April 1985. A copy of these follow-up interrogatories is attached hereto as Exhibit B.

6) Respondent has submitted a Motion for Summary Judgment as a ruse to avoid answering those interrogatories requested by

Exhibit B.

7) Item #s 7 and 8 of respondent's Motion for Summary Judgment are totally false.

Inasmuch as the only legally available method for the petitioner to pursue in controverting the alleged facts that have been set forth in the motion by the respondent is through cross-examination of the Affiant Theresa E. Mitchell, WHEREFORE, it is prayed that such cross examination be granted by the Court, should respondent's Motion for Summary Judgment prevail. Exhibit C, entitled "AFFADAVIT OF WILLIAM M. BIERMANN IN OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT", is attached hereto to establish that the alleged facts set forth by Affiant or respondent are genuinely disputed as required by Rule 121(e).

Respectfully submitted,

/s/ W. M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852

Telephone (813) 465-5090

Date:
14 May 1985

24 April 1985

Mr. W. Preston WHITE, Jr.,
District Counsel
INTERNAL REVENUE SERVICE
1502 Federal Office Building
51 S.W. First Avenue
Miami, Florida 33130

Reference: Docket No. 21777-84

Dear Mr. WHITE:

Having complied with Rule 70(a)(1) of Rules of Practice & Procedure of the United States Tax Court, and Brannerton Corporation v. Commissioner, 61 T.C. 691 (1974), by meeting with your representative, Attorney Terry Mitchell, on the 18th of April 1985 in Miami, Florida, in an attempt to obtain answers to the following interrogatories, I hereby respectfully request written answers to these interrogatories, inasmuch as Attorney Mitchell failed to answer ANY of these interrogatories as required by Rule 71 of Rules of Practice & Procedure of the United States Tax Court:

1) Identify all of the documents and things, including any documents or things

similar to a Form W-2 or 1099, that were received by the Commissioner during the calendar years 1980, 1981, and 1982; and further, identify all acts and events taken pursuant to the receipt of these documents and things, and identify the agents and personnel associated with the receipt and processing of the documents and things.

2) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made, either by FACT or LAW, that Petitioner was an enfranchised or otherwise privileged person, voluntarily and knowingly requesting and exercising such privilege, and knowingly incurring a liability to perform for the Commissioner as a consequence of the exercise of said privilege.

3) Identify the documents and things, the acts and events, and the agents and

personnel associated with such documents, things, acts, and events, whereby it was determined that Petitioner was a person liable for any tax imposed by the Code, within the meaning of 26 USC 6001 and 6011.

4) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby it was determined that Petitioner was compelled, required, mandated, either by FACT or LAW, notice, regulations, administrative fiat, or by court order to make and file a Form 1040 Individual Income Tax Return, within the meaning of the LAW.

5) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts and events, whereby an assertion and proof of jurisdiction over Petitioner was made for imposing an indirect tax, whether an excise, impost, duty, or

income tax, and state which indirect tax is involved among those listed, within the meaning of the Code.

6) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby an assertion and proof of jurisdiction over Petitioner was made for imposing a direct tax, within the meaning of the Code.

7) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made that Petitioner had receipts as source, and had incurred costs and disbursements in relation to the receipts, within the meaning of the Code.

8) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a deter-

mination was made that Petitioner had derived profit, gain, and income from his capital receipts as source, within the meaning of the Code.

9) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made that Petitioner had derived profit, gain, and income from his labor receipts as source, within the meaning of the Code.

10) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made that Petitioner has a "tax year".

11) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a deter-

mination was made that Petitioner is an "employee", within the meaning of Section 3401 (c) of the Code.

12) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made that Petitioner is an "employee" of and "employer", within the meaning of Section 3401(d) of the Code.

13) Identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made that Petitioner had been paid "wages" as an "employee" of an "employer", within the meaning of Section 3401(a) of the Code.

14) Inasmuch as your ANSWER of 9-6-84 denied item #1 of my PETITION of 26 June 1984, in which I stated Petitioner is a natural, private individual, it is re-

quested you identify the documents and things, the acts and events, and the agents and personnel associated with such documents, things, acts, and events, whereby a determination was made by FACT that Petitioner is <u>not</u> a natural, private individual. Attorney Mitchell's stock oral answers such as: "The Commissioner has determined", or "You are required by law to file an income tax return" are simply not answers to any of the above interrogatories, but are merely evasive answers and completely irrelevant to the questions asked. Besides, her statement that "You are required by law to file an income tax return" is a blatant lie. In fact, it is such a blatant lie, that if you will supply me with the law or that section /of the Code requiring me to file an income tax return, it will not be necessary for you to supply me with the answers to the aforementioned interrogatories. (EXHIBIT B)

Respectfully, /s/ W. M. Biermann, Petitioner
192 Park Land Drive, Lake Placid, Fl. 33852

UNITED STATES TAX COURT

WILLIAM M. BIERMANN, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	UNITED STATES TAX COURT FILED OCT 2 1985 Docket No. 21777-84 U.S. TAX COURT DENIED OCT 8 1985 (Signed) Helen A.Buckley SPECIAL TRIAL JUDGE

MOTION TO VACATE DECISION

Petitioner moves this Court, pursuant to Rule 162 of Rules of Practice & Procedure of the United States Tax Court, to vacate its decision entered the 24th of September 1985. In support of this motion Petitioner respectfully calls to the attention of the Court the following:

1) The Court, in issuing an ORDER AND DECISION based upon a MEMORANDUM SUR ORDER citing spurious and unrelated case law in FALSELY accusing Petitioner of taking a frivolous position, has effectively denied "due process" by depriving the Petitioner of an opportunity of a Tax Court trial in

which he could have successfully challenged the allegations appearing in that sur order that may have been brought forward during trial. This ORDER AND DECISION was entered by the Court notwithstanding that Petitioner had submitted a NOTICE OF OBJECTION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT in which he clearly outlined 7 substantive statements of FACT in support of that notice of objection. Although the Petitioner had requested in his notice of objection that he be given the opportunity to controvert the alleged facts set forth by Respondent in his Motion for Summary Judgment, as permitted by Rule 121(e), he was <u>also</u> denied this opportunity to be heard and to cross-examine affiant, thereby further denying him "due process".

2) Although the primary underlying issue of "liability" of the Petitioner has <u>never</u> been established, since Section 6001 of the Code, or <u>any other</u> section of that

Title fails to explain how a natural private individual such as Petitioner becomes "liable", and since notice indicated in 6001 was not served upon the Petitioner by the Secretary in writing or by regulations to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is "liable" for tax under Title 26, nevertheless both the Respondent and the Tax Court have FALSELY accussed Petitioner of that "liability". Were it not for the following item #3 of this motion, that issue would be paramount in establishing the requirement for filing a "federal income tax return" by an Individual.

3) The following quotation appearing on page 3 of the Court's MEMORANDUM SUR ORDER: "A motion for summary judgment will permit a judgment in respondent's favor based upon his presumption of correctness unless the nonmoving party introduces evidence in his pleadings or otherwise to show that there is a

> genuine issue of material fact. Welch v. Helvering, supra; Abramo v. Commissioner, 78 T.C. 154, 163 (1982).", is

hereby and herewith the basis to show the documented evidentiary FACT of a "genuine issue of material fact", proving conclusively beyond any element of doubt, that the 16th Amendment to The Constitution was illegally ratified in 1913 when Secretary of State Philander C. KNOX FRAUDULENTLY certified to the United States Congress that the required number of States had legally ratified that amendment. This documented evidentiary FACT is a matter of "public record" in the form of a Memorandum from the Office of The Solicitor, Department of State dated the 15th of February 1913 under "public domain" protection in the National Archives in Washington, D.C. Page 6 of that Memorandum, prepared at the request of Secretary KNOX by his Solicitor (his attorney), under the underlined heading Errors in Resolutions of

State Legislatures in quoting the Proposed 16th Amendment., states the following:

"In the certified copies of the resolutions passed by the legislatures of the several states ratifying the proposed 16th amendment, it appears that only four of those resolutions (those submitted by Arizona, North Dakota, Tennessee and New Mexico) have quoted absolutely accurately and correctly the 16th amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or wording. Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording. The following is a list of the states indicating the errors made:

Alabama	Error of punctuation.
Kentucky	Errors of punctuation and capitalization.
South Carolina	Error capitalization.
Illinois	Error of capitalization; "renumeration" instead of "enumera tion".
Mississippi	"The" omitted before "Congress"; errors of punctuation and capitalization; "of" instead of "or" before "enumeration".
Oklahoma	Error of capitalization; "from" used instead of "without re-

	gard to" before "any".
Maryland	Error of punctuation.
Georgia	"Levy" used instead of "lay"; errors of punctuation; "sources" instead of "source"; "income" instead of "incomes".
Texas	Error of punctuation.
Ohio	Error of capitalization.
Idaho	Error of capitalization; "of" instead of "or", before "enumeration".
Oregon	Error of capitalization.
Washington	Errors of capitalization and punctuation; "income" instead of "incomes".
California	"The" omitted before "Congress"; "any" before "census", and "or" before "enumeration" omitted; errors of punctuation and capitalization.
Montana	Errors of capitalization.
Indiana	Error of capitalization.
Nevada	Errors of punctuation and capitalization.
North Carolina	Errors of punctuation and capitalization.
Nebraska	Error of capitalization.
Kansas	Error of capitalization.
Colorado	Error of punctuation.
North Dakota	No errors.
Michigan	Error of capitalization.
Iowa	Error of capitalization.
Missouri	Error of capitalization; "levy" instead of "lay".
Maine	Errors of punctuation and capitalization.
Tennessee	No errors.
Arkansas	"The" before "Congress" omitted; "the" before "power" inserted; errors of punctuation and capitalization.

Wisconsin	Errors of capitalization.
New York	Errors of punctuation and capitalization.
South Dakota	"The" before "Congress" omitted; errors of punctuation and capitalization.
Arizona	No errors.
Minnesota	Resolution of the State Legislature not filed with the Department.
Louisiana	Error of punctuation.
Delaware	"Article XVI" omitted; errors of punctuation.
Wyoming	Errors of punctuation and capitalization.
New Jersey	Error of capitalization.
New Mexico	No errors."

In addition to the above listed errors committed by the States purported to have ratified the 16th Amendment to The Constitution, there are many other procedural and constitutional errors appearing in the Legislative Journals of those States that were committed of which Secretary KNOX'S Solicitor was not aware. However, the above listed errors and statement by Secretary KNOX'S Solicitor is sufficient documented unimpeachable "public record" evidence of a"genuine issue of material fact", showing conclusively beyond any element of doubt, that

the 16th Amendment to The Constitution was FRAUDULENTLY ratified; and that therefore the ORDER AND DECISION entered on the 24th of September 1985 is unsupported by statutory law due to automatic vitiation of the 16th Amendment due to FRAUD, and therefore MUST be VACATED by the United States Tax Court.

Respectfully submitted,

/s/ W. M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090 Date: 30 September 1985

CERTIFICATE OF SERVICE

This is to certify that the foregoing document has been served on the parties named, in the United States Mail, in a postage paid wrapper to the addresses shown, and on the following date:

Clerk, United States Tax Court
(Original, plus 4 copies)
400 Second Street, N.W.,
Washington, D.C. 20217

W. Preston White, Jr.,
District Counsel
Theresa E. Mitchell
Attorney
1502 Federal Office Building
51 S.W. First Avenue
Miami, Florida 33130

/s/ W. M. Biermann, Petitioner
192 Park Land Drive
Lake Placid, Florida 33852

Date: 30 September 1985

William M. Biermann, Petitioner pro se
192 Park Land Drive
Lake Placid, Florida 33852

Telephone: (813) 465-5090

NOTARIZED STATEMENT OF PETITION
FOR A WRIT OF CERTIORARI

STATE OF FLORIDA
COUNTY OF HIGHLANDS

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared WILLIAM M. BIERMANN, to me known to be the person described in and who executed the foregoing instrument, and who acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 14th day of November 1986.

Vanessa J. Wilson

MY COMMISSION EXPIRES:

Notary Public, State Of Florida At Large
My Commission Expires June 21, 1989
Bonded By Lawyers Surety Corp

AFFIDAVIT OF SERVICE OF THIS PETITION
FOR A WRIT OF CERTIORARI

As required by Rule 28.5 and 28.5(c) of RULES of the Supreme Court of the United States, this is to certify that in addition to the forty (40) copies served on the Clerk of the United States Supreme Court, that copies as so indicated below of the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT have also been served on the following parties, in the United States Mail, in a postage paid first-class wrapper to the addresses shown on the following date; and that this constitutes service on all parties so required to be served: _____
(Date Served)

Solicitor General (3 copies)
Department of Justice
Washington, D.C. 20530

Ass't Attorney General (1 copy)
Tax Division
Department of Justice
Washington, D.C. 20530

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